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THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 26 NUMBER 17
September 6, 1994 Indexed 26 N.J.R. 3505-3780
(Includes adopted rules filed through August 15, 1994)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JUNE 20, 1994
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JULY 18, 1994

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Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **October 6, 1994.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

The official publication containing notices of proposed rules and rules adopted by State agencies pursuant to the New Jersey Constitution, Art. V, Sec. IV, Para. 6 and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Issued monthly since September 1969, and twice-monthly since November 1981.

The New Jersey Register (ISSN 0300-6069) is published the first and third Mondays (Tuesday, if Monday is a holiday) of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6606. Subscriptions, payable in advance, are one year, $125 ($215 by First Class Mail); back issues when available, $15 each. Make checks payable to OAL Publications.

POSTMASTER: Send address changes to New Jersey Register, CN 301, Trenton, New Jersey 08625. Second Class Postage paid in South Plainfield, New Jersey.

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RULE PROPOSALS

PERSONNEL

(a)

MERIT SYSTEM BOARD

Equal Employment Opportunity and Affirmative Action

Sexual Harassment

Reproposed Amendments: N.J.A.C. 4A:2-2.3, 4A:7-1.3 and 4A:7-3.3

Proposed Amendment: N.J.A.C. 4A:7-3.4

Authorized By: Merit System Board, Linda M. Anselmini, Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:2-6(d), 11A:2-20 and 11A:7-1 et seq.

Proposal Number: PRN 1994-481.

Public hearings on the reproposed amendments and proposed amendment will be held on:

Thursday, September 22, 1994 at 6:00 P.M.
Auditorium
Essex Catholic Boys High School
135 Glenwood Avenue
East Orange, New Jersey

Thursday, September 29, 1994 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza
Hamilton Township, New Jersey

Tuesday, October 4, 1994 at 6:00 P.M.
Cafeteria
Howard Phifer Middle School
8201 Park Avenue
Pennsauken, New Jersey

Please call the Regulations Unit at (609) 292-6568 if you wish to be included on the list of speakers.

Submit written comments by October 6, 1994 to:

Janet Share Zatz
Director of Appellate Practices and Labor Relations
Department of Personnel
CN 312
Trenton, NJ 08625

The agency proposal follows:

Summary

In accordance with recommendations recently made by the Review Committee on Sexual Harassment (Review Committee) and a landmark New Jersey Supreme Court decision, the Merit System Board published proposed amendments concerning sexual harassment in the March 7, 1994 New Jersey Register (see 26 N.J.R. 1182(a)). However, the comments submitted in written form and in testimony at the public hearing held on March 23, 1994 before Henry Maurer, who served as the hearing officer, contained valid criticisms and helpful suggestions for changes. Mr. Maurer made no recommendations to the Merit System Board. Therefore, the Board has decided to withdraw the pending proposal and instead publish for comment a revised set of amendments. The hearing record may be reviewed by contacting Janet Share Zatz, Director of Appellate Practices and Labor Relations, Department of Personnel, CN 312, Trenton, NJ 08625.

The originally proposed amendment to N.J.A.C. 4A:2-2.3, to make discrimination and, in particular, sexual harassment, a specific cause for discipline against an employee, remains unchanged.

Amendments to N.J.A.C. 4A:7-1.3 are also proposed to bring the language on the prohibition of sexual harassment in State government in line with the principles enunciated in *Lehmann v. Toys 'R' Us, Inc.*, 132 *N.J.* 587 (1993). As originally proposed, amendments to this section described the two categories of conduct that constitute sexual harassment: conduct in which sexual demands of an employee are made a term or condition of employment or the basis of an employment decision; and conduct which causes a severe or pervasive change in the conditions of employment, thereby creating a hostile working environment. Examples of this latter conduct were provided. These amendments are being clarified in the reproposed amendments to indicate that, as stated in the new N.J.A.C. 4A:7-1.3(c), prohibited conduct listed in paragraph (a)3 constitutes sexual harassment when it is committed by coworkers, as well as supervisors or other superiors. It was pointed out in comments received during the public comment period for the original proposal that the language, as first proposed, implied that such prohibited conduct committed by coworkers would not constitute sexual harassment. Thus, the reproposed amendments at N.J.A.C. 4A:7-1.3(c) is being clarified to protect against this potential misapprehension.

Comments were also received concerning the new definition of sexual harassment itself. For example, it was suggested that the proposed N.J.A.C. 4A:7-1.3(a)3, which defines hostile work environment sexual harassment, be changed to read that the prohibited "conduct has the purpose, or might reasonably be expected to have the effect of, unreasonably interfering with an employee's work performance . . ." In response, the Board has decided to modify the language as originally proposed to clarify its meaning and make it more consistent with the holding of *Toys 'R' Us*. Therefore, paragraph (a)3 is reproposed to state that the prohibited conduct "has the purpose or effect of unreasonably interfering with an employee's work performance or creating an unreasonably intimidating, hostile or offensive working environment."

It was also commented that N.J.A.C. 4A:7-1.3(a)3iii, which provides an example of hostile work environment sexual harassment, should be changed to state that such harassment may include solicitation of "sexual activity or other sex-linked behavior by promise of work-related reward." The Board has decided not to include this suggestion in the reproposed amendments. "Quid pro quo" sexual harassment, in which employment decisions are affected by submission to prohibited conduct and with which the commenters appear to have been concerned, is addressed in the reproposed paragraph (a)2. In addition, the language of subparagraph (a)3iii is based on recommendations by the Review Committee.

Several commenters argued that the proposed subsection (b) should be changed to permit an employee to state a sexual harassment claim by showing that other employees of either sex, not just the same sex, were sexually harassed. The Board does not believe that such a change is consistent with the *Toys 'R' Us* decision. The Court stated that a "woman's perception that her work environment is hostile to women will obviously be reinforced if she witnesses the harassment of other female workers." The same may be said of a man's perception of a hostile work environment, which could result from witnessing the harassment of other male workers.

The reproposed amendments also include proposed amendments to N.J.A.C. 4A:7-3.3, on departmental review of discrimination complaints in State service. The most significant proposed changes to this section concerns the selection of an authorized designee for the referral and investigation of a sexual harassment complaint.

This part of the reproposed amendments is different from that originally proposed, in view of the serious reservations expressed by several commenters about the use of an authorized designee for investigation of sexual harassment complaints. These commenters questioned whether such authorized designees would have the expertise necessary to investigate a complaint of discrimination. Another commenter indicated that N.J.A.C. 4A:7-3.3(a) should be amended to indicate that the authorized designee conducting the investigation shall be selected by the department head. It was also commented that if a same gender employee in the Affirmative Action Office cannot be assigned to a sexual harassment complaint, then the complaint could be elevated to the Division of Equal Employment Opportunity and Affirmative Action (EEO/AA) for investigation there.

Accordingly, the Board has decided to address these concerns by proposing that the authorized designee have appropriate training in conducting sexual harassment investigations and clarifying that this individual is selected by the department head. In this way, the uniquely sensitive nature of a sexual harassment complaint, recognized by the Review Committee, would be addressed by permitting an authorized designee to investigate the complaint, but language would be added to ensure that this individual would be qualified to do so. Further, N.J.A.C. 4A:7-3.3(a) would be amended to state that a discrimination complaint shall be presented to the appointing authority Affirmative Action Officer (AAO), as presently required or, at the option of the complainant in the case of a sexual harassment complaint, to an authorized designee

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of the department head. A new N.J.A.C. 4A:7-3.3(a)1 would provide that the authorized designee have appropriate training in conducting such investigations. N.J.A.C. 4A:7-3.3(b) would be amended to state that the AAO or authorized designee shall investigate the discrimination complaint.

The Board does not believe, however, that it would be appropriate to refer such matters to the Division of EEO/AA in lieu of review by an AAO. The current regulatory framework for the handling of discrimination complaints includes appointing authority investigation, and possible resolution of the complaint, prior to appeal of the matter to the Division of EEO/AA. This approach could actually obviate the need for further appeal. This framework would be upset by the bypassing of the initial level of review. Therefore, the Board has decided not to include the suggestion in the reproposed amendments.

The Board also proposes amending N.J.A.C. 4A:7-3.3(a) to lengthen the time limit for filing all discrimination complaints from 20 to 30 days, in accordance with another recommendation by the Review Committee. This language was present in the original proposal. One commenter stated that the time limitation should not preclude an appointing authority from reviewing such complaints filed after 30 days. The Board has decided to include this suggestion in the reproposed amendments.

Another comment was received proposing that, to conform the rules to the new sexual harassment complaint process instituted by the Review Committee, a complainant may initiate a sexual harassment or other discrimination complaint directly with the Division of EEO/AA under certain circumstances. Specifically, when filing the complaint with the appointing authority in the first instance would pose a conflict of interest in any aspect of the intake, investigative or decision-making process, then the complaint could be filed directly with the Division of EEO/AA. Thus, the Board proposes a new N.J.A.C. 4A:7-3.3(a)2 to include this language in the rule.

Also, the Board proposes other amendments to N.J.A.C. 4A:7-3.3(b), not in the original proposal, based on comments received during the public comment period. First, it is proposed that the extension beyond 45 days for the department head to render a written decision may only occur if agreed to by the complainant, rather than by the parties as currently provided.

In addition, the Board originally proposed, in paragraph (b)2, that receipt of a department head's discrimination decision be limited to the complainant, the AAO, the authorized designee and the Division of EEO/AA. The amended language in paragraph (b)2, as first proposed, referred to the "individual filing the complaint" rather than the "complainant"; the reproposed language ensures consistency with the rest of this reproposal by referring to the complainant. The reproposed language provides that the individual against whom the complaint is made shall be furnished with the decision.

However, a suggestion to lengthen the period in all cases from 45 to 60 days for a decision by a department head is not being included in the proposed amendments because the Board believes that 45 days generally is a sufficient amount of time for the issuance of such a decision.

Finally, amendments to N.J.A.C. 4A:7-3.4 are being proposed. This rule was not included in the original set of proposed amendments. The amendments specify that only the complainant will ordinarily have an appeal right to the Division of EEO/AA and, later, the Merit System Board. However, the Board has proposed additional language to provide that the individual against whom the complaint is made has appeal rights to the Division of EEO/AA, but only when no other appeal avenue exists through the disciplinary process.

Social Impact

As stated in the original proposal, the proposed amendments are intended to strengthen existing procedures in merit system rules which address the problem of sexual harassment. In particular, the definition of sexual harassment to be added to N.J.A.C. 4A:7-3.3 should help employees to understand what conduct is prohibited and to help an employee identify sexual harassment before deciding to file a discrimination complaint. Further, by amending N.J.A.C. 4A:2-2.3, on causes for discipline, to specifically mention discrimination and sexual harassment, employees will be on notice that this type of conduct will lead to disciplinary action. The increase in the time limit for complaints from 20 to 30 days should minimize confusion for employees who may be familiar with the 30 day time limit for filing grievances. Finally, permitting a complainant to go directly to the Division of Equal Employment Opportunity and Affirmative Action and bypassing the appointing authority level of appeal, in a case of a conflict of interest in any discrimination appeal, should encourage victims of discrimination, including sexual harassment, to come forward. These amendments should help to decrease the incidence of sexual harassment and ensure a recourse for an employee who is a victim of sexual harassment.

Economic Impact

As noted in the original proposal, the Review Committee found that sexual harassment has a negative impact on employee productivity. Thus, the strengthening of rules relating to sexual harassment should have a positive economic impact by promoting a more productive workplace. Also, there should be a marginal increase in the receipt of appeals by appointing authorities in State service and by the Division of EEO/AA in the Department of Personnel.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendments would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments will regulate employment in the public sector.

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

4A:2-2.3 General causes

(a) An employee may be subject to discipline for:

1.-7. (No change.)

8. Misuse of public property, including motor vehicles; [and]

9. Discrimination, including sexual harassment; and

[9.]**10.** Other sufficient cause.

4A:7-1.3 Prohibition of sexual harassment in State government

(a) [Deliberate or repeated unwelcome sexual advances, requests for sexual favors, comments, gestures and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment; when submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.] **Sexual harassment is defined as unwelcomed sexual advances, requests for sexual favors and other verbal or physical conduct based on gender when:**

1. Submission to such conduct is made either explicitly or implicitly a term or condition of employment;

2. Submission to or rejection of such conduct by an employee is used as the basis for employment decisions affecting the employee; or

3. Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an unreasonably intimidating, hostile or offensive working environment. This type of sexual harassment includes, but is not limited to:

i. Generalized gender-based remarks and behavior;

ii. Inappropriate, unwanted, offensive physical or verbal sexual advances and comments;

iii. Solicitation of sexual activity or other sex-linked behavior by promise of reward;

iv. Coercion of sexual activity by threat of punishment; and

v. Gross sexual imposition such as touching, fondling, grabbing or assault.

(b) The employee need not be a personal target of harassment to file a complaint. The employee instead may show that other employees of the same sex were sexually harassed.

(c) Conduct under (a)3 above by a supervisor, other superior or by coworkers constitutes prohibited sexual harassment when a reasonable person of the same sex in the employee's position would consider it sufficiently severe or pervasive to alter the conditions of employment.

Recodify existing (b)-(e) as **(d)-(g)** (No change in text.)

4A:7-3.3 Departmental review: State service

(a) A discrimination complaint shall be presented to the affirmative action officer of the appointing authority, **or at the option of the complainant to an authorized designee of the department head in the case of a sexual harassment complaint,** with a copy to the

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Director of the Division of EEO/AA, within [20] **30** days of either the discriminatory action or the date on which [individual] **complainant** should reasonably have known of its occurrence. [It] **This time limitation, however, does not preclude the appointing authority from exercising its discretion to conduct its own investigation of a discrimination complaint. The complaint** shall be in writing and specify the basis for the complaint.

1. The authorized designee shall have appropriate training in conducting such investigations.

2. The complainant may present a discrimination complaint directly to the Division of EEO/AA, if filing a complaint with the affirmative action officer would pose a conflict of interest, for example, where the individual against whom the complaint is made is involved in the intake, investigative or decision-making process.

(b) The affirmative action officer, **or, in the case of a sexual harassment complaint, either the authorized designee if so directed by the department head or the affirmative action officer,** shall investigate the complaint and prepare a report to the department head. The department head shall render a written decision within 45 days of the receipt of the complaint by the affirmative action officer, unless a longer period is agreed to by the [parties] **complainant.**

1. (No change.)

2. The [individual] **complainant, the individual against whom the complaint is made, the affirmative action officer and/or the authorized designee who conducted the investigation** and the Division of EEO/AA shall be furnished with a copy of the final decision by the department head.

4A:7-3.4 Department of Personnel proceedings: State service

(a) [An individual] **A complainant** may appeal a final decision of the department head to the Division of EEO/AA within 20 days of receipt of the decision.

1. If no decision is received within the timeframe specified in N.J.A.C. 4A:7-3.3(b), the [individual] **complainant** may request, in writing, that the Division of EEO/AA assume jurisdiction of the complaint. The Division of EEO/AA shall notify the appointing authority of its action.

2. If probable cause is found, the individual against whom the complaint is made may appeal the decision to the Division of EEO/AA within 20 days of receipt of the probable cause determination but only if no disciplinary action is recommended therein.

Recodify existing 2. and 3. as **3. and 4.** (No change in text.)

(b) [A party] **The complainant** may appeal the decision of the Division of EEO/AA to the Merit System Board within 20 days of receipt of the decision.

1.-3. (No change.)

(a)

MERIT SYSTEM BOARD

Performance Evaluations

Proposed Amendments: N.J.A.C. 4A:2-3.1 and 4A:6-5.3

Authorized By: Merit System Board, Linda M. Anselmini, Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:2-6(d), 11A:2-11(h) and 11A:6-28.

Proposal Number: PRN 1994-482.

Public hearings concerning the proposed amendments will be held on:

Thursday, September 22, 1994 at 6:00 P.M.
Auditorium
Essex Catholic Boys High School
135 Glenwood Avenue
East Orange, New Jersey

Thursday, September 29, 1994 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza
Hamilton Township, New Jersey

Tuesday, October 4, 1994 at 6:00 P.M.
Cafeteria
Howard Phifer Middle School
8201 Park Avenue
Pennsauken, New Jersey

Please call the Regulations Unit at (609) 292-6568 if you wish to be included on the list of speakers.

Submit written comments by October 6, 1994 to:

Janet Share Zatz, Director
Division of Appellate Practices
and Labor Relations
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Questions have arisen concerning whether an employee in State service may appeal from a final performance assessment review (PAR) rating of a two (Exceeds Standards) or a three (Meets Standards). Currently, N.J.A.C. 4A:6-5.3 only mentions the right of an employee to grieve, through departmental non-contractual grievance procedures, a final rating of a four (Marginally Below Standards) or a five (Significantly Below Standards), as well as a disagreement concerning job performance standards. However, N.J.A.C. 4A:2-3.1(b) defines a grievance as an employee complaint regarding any term or condition which is beyond the employee's control and is remediable by management.

To clarify employees' rights in these instances, the Merit System Board proposes amendments to N.J.A.C. 4A:6-5.3 to provide that an employee in State service who disagrees with a final PAR rating of a two or three may utilize non-contractual grievance procedures in certain egregious instances. If a final rating is based on invidious discrimination, is given in retaliation for the lawful activities of the employee, or is the result of a significant violation of the PAR rules, an employee may file a grievance.

The proposed amendment further emphasizes that these are the only instances in which an employee may grieve a final rating of a two or a three. Also, N.J.A.C. 4A:2-3.1 will include a cross-reference to the proposed amendments in N.J.A.C. 4A:6-5.3.

Social Impact

The standard to be set by the proposed amendment should not increase the number of grievances to be heard. A final rating of a two or a three is not considered an adverse rating. The proposed amendment recognizes, consequently, that there should be an avenue for these ratings only in case of a serious impropriety. Since final PAR ratings of three or better do affect promotional examination scoring, pursuant to recent amendments to N.J.A.C. 4A:4, and also may be used to break ties in seniority in layoff situations, it is particularly imperative that employees have a grievance mechanism for the serious circumstances delineated in the proposed amendments.

Economic Impact

As noted above, the proposed amendment clarifies State employees' rights to grieve PAR ratings. In fact, the amendment can be considered a narrowing of the broad scope of grievances set forth in N.J.A.C. 4A:2-3.1(b). Therefore, no economic impact is anticipated based on the cost of processing such grievances.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since these proposed amendments will have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments will regulate employment in the public sector.

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

SUBCHAPTER 3. MINOR DISCIPLINE AND GRIEVANCES

4A:2-3.1 General provisions

(a)-(g) (No change.)

(h) See N.J.A.C. 4A:6-5.3 for grievances concerning the Performance Assessment Review (PAR) program.

4A:6-5.3 PAR use and review: State service

(a) An employee receiving an annual PAR rating of a four or a five shall be denied an anniversary date increment.

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1. An appointing authority may request an anniversary date increment for an employee who was denied an increment because of receiving a four rating but whose performance has subsequently improved. If approved by the Department of Personnel, such increment shall not be effective until a pay period beginning at least 90 days after the employee's anniversary date.

2. An employee who receives an annual rating of a four or five shall be referred by the appointing authority to the Employee Advisory Service. See N.J.A.C. 4A:6-4.10.

(b) An employee who has received an annual PAR rating of a four or a five may appeal such rating through departmental noncontractual grievance procedures. See N.J.A.C. 4A:2-3.1 **et seq.** In addition to the grievance procedure requirements, all appeals shall be accompanied by a copy of the PAR evaluation.

(c) An employee may appeal the final departmental decision to the Merit System Board within 20 days of receipt of the decision.

1. The appeal shall be in writing and include a copy of the written departmental decision and the basis for the appeal.

2. The employee shall have the burden of proof to establish that the actions of the supervisor in assigning the rating were arbitrary, unreasonable or induced by improper motives.

3. The Board shall render a final administrative decision upon the written record or such other proceeding as it deems appropriate. See N.J.A.C. 4A:2-1.1.

(d) **Other employee complaints concerning the PAR program shall be processed as follows:**

1. An employee who disagrees with his or her PAR job performance standard may utilize the noncontractual grievance procedures. The Department of Personnel may designate a person to aid in the resolution of such matters.

2. An employee who disagrees with a final rating of two or three may utilize the noncontractual grievance procedures if the rating is based on invidious discrimination considerations, such as age, race or sex bias; if it is in retaliation for lawful activities, such as filing grievances or appeals; or if it is the product of a significant violation of this subchapter, such as the failure to develop a job performance plan at the beginning of the rating period. Notwithstanding the provisions of N.J.A.C. 4A:2-3, grievance proceedings shall be required only if the grievance presents facts substantially supporting one or more of the grounds stated above.

3. An employee may appeal the final departmental decision to the Commissioner of Personnel pursuant to N.J.A.C. 4A:2-3.7.

(e) A rating of a five shall constitute evidence of incompetency, inefficiency or failure to perform duties. In a disciplinary action, an employee may challenge the basis of any rating that is an issue in the proceeding.

(f) Performance ratings may be used as a factor in promotion (see N.J.A.C. 4A:4-2.15) and layoff (N.J.A.C. 4A:8-2.2(c)4).

(a)

MERIT SYSTEM BOARD

Selection and Appointment

Approval of Appointments by Department of Personnel

Proposed Amendment: N.J.A.C. 4A:4-1.10

Authorized By: Merit System Board, Linda M. Anselmini, Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:2-6(d), 11A:4-1 and 11A:4-8.

Proposal Number: PRN 1994-483.

Public hearings concerning the proposed amendment will be held on:

Thursday, September 22, 1994 at 6:00 P.M.
Auditorium
Essex Catholic Boys High School
135 Glenwood Avenue
East Orange, New Jersey

Thursday, September 29, 1994 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza
Hamilton Township, New Jersey

Tuesday, October 4, 1994 at 6:00 P.M.
Cafeteria
Howard Phifer Middle School
8201 Park Avenue
Pennsauken, New Jersey

Please call the Regulations Unit at (609) 292-6568 if you wish to be included on the list of speakers.

Submit written comments by October 6, 1994 to:

Janet Share Zatz, Director
Division of Appellate Practices and Labor Relations
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The current rule at N.J.A.C. 4A:4-1.10 on approval of appointments provides that all initial and subsequent appointments, promotions and related personnel actions are subject to the review and approval of the Department of Personnel. This rule is generally applied to individual personnel actions, and enables the Department of Personnel to ensure that all such actions are in compliance with merit system law and rules. However, it is sometimes necessary to impose a freeze on personnel actions for an entire appointing authority. For example, in a layoff action, a personnel action freeze may be required in order for the Department of Personnel to conduct an effective review of the appointing authority's layoff plan and to undertake necessary oversight activity. Therefore, the Board proposes that the rule be amended to clarify that the Commissioner of Personnel may direct personnel action freezes in connection with layoffs or other emergent circumstances.

Social Impact

The proposed amendment would clarify current practice, whereby the Department of Personnel's appointment approval authority may be invoked to impose a personnel action freeze during a layoff or other emergent situation. This practice may result in delays of some personnel actions, such as hiring, promotion and transfer. However, such delays may be necessary when an appointing authority is undergoing a complex and disruptive process such as a layoff.

Economic Impact

As noted above, the proposed amendment does not change current practice. Therefore, no economic impact is anticipated.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendment would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment would regulate employment in the public sector.

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

4A:4-1.10 Approval of appointments by Department of Personnel

(a) All initial and subsequent appointments, promotions, and related personnel actions are subject to the review and approval of the Department of Personnel.

1. The Commissioner may direct personnel action freezes in connection with layoffs or other emergent circumstances.

(b) Following submission and review of personnel actions, the appointing authority shall be notified by the Department of Personnel whether the action has been approved or disapproved and the reasons for any disapproval. The appointing authority shall provide written notice to all affected employees of such personnel actions.

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(a)

MERIT SYSTEM BOARD

Leaves, Hours of Work and Employee Development Family and Medical Leave

Reproposed New Rule: N.J.A.C. 4A:6-1.21B
Proposed New Rules: N.J.A.C. 4A:6-1.21 and 4A:6 Appendix
Reproposed Amendments: N.J.A.C. 4A:6-1.1, 1.8 and 1.10
Proposed Amendments: N.J.A.C. 4A:6-1.3, 1.6 and 1.21, and 4A:8-2.4

Authorized By: Merit System Board, Linda M. Anselmini, Commissioner, Department of Personnel.

Authority: N.J.S.A. 34:11B-1 et seq.; N.J.S.A. 11A:2-6(d); N.J.S.A. 11A:6-1 et seq.; 29 U.S.C. 2601 et seq.; and 29 CFR 825 et seq.

Proposal Number: PRN 1994-484.

Public hearings concerning the reproposed new rule and amendments and proposed amendments will be held on:

Thursday, September 22, 1994 at 6:00 P.M.
Auditorium
Essex Catholic Boys High School
135 Glenwood Avenue
East Orange, New Jersey

Thursday, September 29, 1994 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza
Hamilton Township, New Jersey

Tuesday, October 4, 1994 at 6:00 P.M.
Cafeteria
Howard Phifer Middle School
8201 Park Avenue
Pennsauken, New Jersey

Please call the Regulations Unit at (609) 292-6568 if you wish to be included on the list of speakers.

Submit written comments by October 6, 1994 to:

Janet Share Zatz
Director of Appellate Practices and Labor Relations
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On February 5, 1993, the Federal Family and Medical Leave Act (FMLA) was enacted into law. Regulations promulgated by the U.S. Department of Labor have since been issued to interpret and explain the purpose and effect of the FMLA. Since the FMLA applies to State and local governments (as well as to a large proportion of the private sector) the Merit System Board proposed a new informational rule in the March 7, 1994 New Jersey Register (see 26 N.J.R. 1183(b)) to inform merit system employers and employees of their rights and responsibilities under the FMLA.

The comments submitted in written form and in testimony at the public hearing held on March 23, 1994, before Henry Maurer, who served as hearing officer, contained many valid criticisms, as well as helpful suggested changes. Mr. Maurer made no recommendations to the Merit System Board. Consequently, the Board has decided to withdraw the pending proposal and publish for comment revised new rules and amendments on the FMLA. The hearing record may be reviewed by contacting Janet Share Zatz, Director of Appellate Practices and Labor Relations, Department of Personnel, CN 312, Trenton, NJ 08625.

At the outset, the Board acknowledges comments it received on the original FMLA proposal, indicating that having to follow both laws could cause confusion among both employees and appointing authorities and possibly have a negative impact on productivity. Another commenter proposed the repeal of the New Jersey Family Leave Act (FLA). Yet another commenter proposed making FLA and FMLA leave consistent with each other. The Board notes that the State Family Leave Act can only be repealed or modified by the State Legislature. The FLA rule, currently N.J.A.C. 4A:6-1.21, is necessary for informational purposes as long as the FLA is law. The Merit System Board is not at liberty to promulgate common definitions for both the FLA and the FMLA where the laws provide for differing standards, and where other government agencies have regulatory authority.

However, as noted in this proposal, the FMLA does not supersede greater leave rights already in existence. The FMLA's enforcing agency, the U.S. Department of Labor, is only empowered to enforce provisions of the FMLA, not State law. Conversely, the Division on Civil Rights is empowered to enforce the provisions of the FLA. The Merit System Board is free only to promulgate informational rules in these areas.

In this proposal, the existing N.J.A.C. 4A:6-1.21 (Family Leave) would be recodified as N.J.A.C. 4A:6-1.21A (State Family Leave) and the previously proposed N.J.A.C. 4A:6-1.21A (Federal Family and Medical Leave) would become N.J.A.C. 4A:6-1.21B. An introductory rule, N.J.A.C. 4A:6-1.21, is now proposed as a new rule, in response to helpful comments, to provide an introduction to the rules on the FLA and FMLA, explaining that it is the appointing authority's responsibility to determine whether a leave request falls under the FLA, FMLA, both or neither. However, it is noted that it is already inherent in both the State and Federal programs that the appointing authority shall designate any leave request as FLA, FMLA, or both, as the case may be, as long as the criteria are met for one or both, and regardless of the label an employee may place on the leave request. The introductory rule also will include many helpful examples on how the FMLA works and on the interaction of the FLA and FMLA. Also, to aid in understanding this reproposal and the ways in which FMLA leave and FLA leave are the same or different, an Appendix is proposed. This Appendix includes a comparison chart which compares various aspects of FMLA and FLA leave and indicates which aspects of each are most favorable to employees.

The examples have been moved from the end of N.J.A.C. 4A:6-1.21A(j), as originally proposed, to this introductory rule, to aid users of the rules in understanding the real life situations in which the FLA and FMLA provisions will apply. Reading the substantive rule provisions following these examples, and the Appendix, should help to clarify the meaning of these provisions. Some comments were received on the examples.

One commenter stated that Example Four should be deleted because married State employees should not have to combine FMLA and FLA leave. The commenter stated that recordkeeping in such a situation would be difficult. The Board notes that Example Four illustrates two principles. First, subsection (h) provides, in accordance with 29 CFR 825.701, that the leave of an employee who qualifies under both the Federal and State programs will be counted against both programs. In such instances as leave for the care of a newborn child or to care for a family member with a serious health condition, an employee may be eligible for both programs and the length of the leave would be charged against both the FMLA and FLA entitlements. If the employee has taken six weeks of leave, then this leave time will be subtracted from the employee's total FLA and FMLA entitlements and he or she will be left with six weeks of each of those leaves. If the employee later that same year needs to take six weeks of leave for his or her own serious health condition, it will be charged against the FMLA leave only, since the FLA does not provide for such leave and the employee will still have six weeks of FLA leave left to use if all the requirements are met.

The second principal that Example Four illustrates is that spouses who work for the same employer must combine their total FMLA leave if it is taken for the birth or placement for adoption or foster care of a child, or to care for a parent with a serious health condition, as noted in subsection (g)1 and required by Federal regulation, 29 CFR 825.202. Although the employees may use a combined total of 12 weeks of FMLA leave for one of the aforementioned purposes, that limitation does not apply if they both require leave for their own serious health conditions. This limitation, furthermore, does not apply to FLA leave no matter what the purpose is for the leave.

The Merit System Board understands the administrative difficulties presented by the requirement that married employees who work for the same employer must combine their total FMLA leave under certain circumstances. It also acknowledges that administrative difficulties may arise in counting an employee's leave against both FLA and FMLA entitlements when an employee's leave qualifies under both. However, both of these requirements are explicitly provided for by Federal law. In addition, to the extent that the reproposed new rule at N.J.A.C.

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4A:6-1.21B presents unique problems for State government, it is important to remember that the new rule applies equally to State and local service.

The FMLA is not supposed to be interpreted differently depending on the identity of the employer. Therefore, the Board has decided not to modify Example Four. All of the examples in this reproposal are identical to the examples that appeared in the original proposal.

N.J.A.C. 4A:6-1.21B(a) notes the effective date of the FMLA, which is August 5, 1993. However, for employees covered under a collective negotiations agreement, the FMLA is not effective until February 5, 1994.

N.J.A.C. 4A:6-1.21B(b) includes important definitions, highlighting differences between the FLA and FMLA. For example, under the FLA, an employee eligible for leave is one who has worked for an employer for at least 12 months for a minimum of 1,000 hours. Under the FMLA, an eligible employee must have worked a minimum of 1,250 hours. Comments about the minimum number of hours worked for eligibility included a suggestion that the reproposed new rule at N.J.A.C. 4A:6-1.21B(b) be clarified to state that, in determining FMLA eligibility, the minimum numbers of hours worked includes overtime. It was also suggested that the current rule at N.J.A.C. 4A:6-1.21(b)3 be amended to state that, in determining FLA eligibility, the minimum number of hours worked does not include overtime. Several comments were also received asking for an amendment to the proposed FMLA rule to indicate that the 1,250 hours be earned during the year immediately preceding the start of the leave. One commenter also suggested that the rule include an amendment providing that an employee have been in pay status during those 1,250 hours.

It is noted that the current rule at N.J.A.C. 4A:6-1.21(b)3, is proposed to be recodified as N.J.A.C. 4A:6-1.21A(b)3, already indicates that the minimum number of hours worked for FLA eligibility are base hours. Thus, the hours do not include overtime. This rule section does not need to be amended. However, the Board believes that N.J.A.C. 4A:6-1.21B(b)1, on the FMLA, should include language to clarify that, in determining whether an employee meets the hours of service requirement for FMLA eligibility, the legal principles established for determining hours of work under Section 7 of the Fair Labor Standards Act (FLSA), 29 U.S.C. 207, shall be followed. The Federal regulations on the FMLA already provide for this (see 29 CFR 825.110). Therefore, all hours which an employer "suffers or permits" an employee to work are counted toward hours of service for purposes of FMLA eligibility, including overtime.

Finally, the Board agrees that this rule section should state that the required hours of work for FMLA eligibility be earned during the 12 months immediately preceding the commencement of the leave. This suggested language tracks the language in the aforementioned Federal regulations. As already noted, however, the Board proposes that paragraph (b)1 indicate that FLSA standards for hours worked shall apply. Consequently, the Board believes that further language concerning an employee being "in pay status" is unnecessary.

The reproposed new rule would also include a definition of "parent" at N.J.A.C. 4A:6-1.21B(b). As noted in the original proposal, this definition differs from the definition under the FLA, in that the State law includes parents-in-law, but the FMLA does not. Subsection (b) further includes a definition of "serious health condition" which is similar but not identical to that for FLA leave. One commenter suggested that subsection (b)5ii and iii should require that the period of incapacity necessary for a "serious health condition" be five or more consecutive work days, to bring this provision in line with the requirement that a State employee may be required to present a proof of illness or injury if the employee has been absent for five or more consecutive work days (see N.J.A.C. 4A:6-1.4(d)). The Board notes that the three-day threshold in proposed subparagraphs (b)5ii and iii is reflective of FMLA regulations (see 29 CFR 825.114). Here again, the Board is not free to adopt a definition of "serious health condition" that differs from FMLA requirements.

Subsections (c) through (f) do not differ from the subsections originally proposed. Subsection (c) notes that all State and local government agencies are covered by the FMLA, regardless of the number of employees.

Subsection (d) lists the three types of FMLA leave, and highlights further differences between the FLA and FMLA. Like the FLA, FMLA leave may be taken for the birth or placement for adoption of a child, or because a child, spouse or parent has a serious health condition. However, FMLA leave is also available for the placement of a foster child, a reason for leave not available under the FLA. Further, paragraph (d)3 describes a leave entitlement unique to the Federal law, medical leave, which an employee may take for his or her own serious health condition. Finally, as provided in subsection (d), 12 weeks of FMLA leave may be taken in a 12-month period. However, the FLA provides for 12 weeks of leave in a two-year period.

Subsection (e) specifies that in State service, the 12-month period within which the 12 weeks of FMLA leave may be taken commences on the first day of such leave. Local agencies have several options under Federal regulations to determine when the 12-month period commences. However, as indicated in paragraph (d)1, the entitlement to leave for the birth or placement for adoption or foster care of a child expires at the end of the 12-month period starting with the date of birth or placement. This provision is unlike that for State family leave, which permits an employee to take leave for the birth or placement for adoption of a child to commence at any time within a year after the event and continue until the exhaustion of the leave entitlement.

Subsection (f) concerns intermittent and reduced FMLA leave. Intermittent leave may last from one hour to a number of weeks; reduced leave reduces the workweek or workday. The employer may limit these reduced increments to the shortest period of time that the employee's payroll system uses. Leave may be taken in this manner when medically necessary for an employee with a serious health condition or when the employee's child, spouse or parent has such a condition. Leave may be taken in this manner for other FMLA purposes only if the employer so agrees. Intermittent family leave under State law differs in that the intermittent intervals are at least one but fewer than 12 workweeks. Family leave on a reduced schedule under State law differs in that leave increments may be no smaller than one workday.

A comment was received indicating that subsection (f) should refer to a "timekeeping" rather than "payroll" system, since it is the timekeeping system that allows for the use of hourly increments. The Merit System Board believes that the language on the payroll system should remain, as originally proposed, since that is the language utilized in the Federal regulations.

Another commenter objected to the provision in subsection (f), which permits employees to use intermittent or reduced FMLA leave when medically necessary if the employee or his or her child, spouse or parent has a serious health condition. The commenter stated that use of FMLA leave in this manner should not vary from appointing authority to appointing authority. The Board notes that the language in subsection (f) tracks the language in 29 CFR 825.203. It would not make sense, for example, to require that an employee take leave intermittently or on a reduced basis; the purpose of these options is to afford an employee flexibility in recognition of the unique circumstances of a particular employee's situation and needs. It is noted that if an employer handles an employee's leave request in a discriminatory or unfair manner, this dispute may be taken to the U.S. Department of Labor, the FMLA enforcing agency. Thus, the Board reproposes this subsection in the form in which it was originally proposed.

Subsection (g) provides for special conditions related to FMLA leave. A significant provision in Federal law which does not apply to State family leave is that a husband and wife working for the same employer (the State, or the same political subdivision) may only take a combined total of 12 weeks of leave in a 12-month period when it is for the birth or placement for adoption or foster care of a child or to care for a parent with a serious health condition. Comments expressed concern about the difficulty of tracking FMLA taken by spouses who work in different State departments, since a department only has access to its own PMIS records. The Board understands the administrative difficulties posed by the requirement, but notes that it is specifically provided by the Federal law. The Board also wishes to reiterate that these rules are informational in nature only, and are intended to benefit local governments also.

The reproposed paragraph (g)2 has also been substantially revised. In response to comments that the meaning of the provision as it first appeared was unclear, and that appointing authorities need to be apprised of their recordkeeping responsibilities, paragraph (g)2 will include language to apprise State and local employers of their other recordkeeping obligations under the FMLA. One of these recordkeeping obligations is that FMLA leave must be designated as such in the employer's record. The reproposed paragraph (g)2 will also state that a general designation such as sick leave does not fulfill this requirement. Language is also included, consistent with 29 CFR 825.500, on the types of records to be retained and the required length of retention.

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Another commenter indicated that N.J.A.C. 4A:6-1.21A should include procedures for public agencies to follow to administer the FMLA. It was urged that uniform procedures for the processing of FMLA requests be developed, including standardized forms for an FMLA leave request, medical certifications and basic information. It was indicated that such standard forms are available from the Federal government. The Board notes that, since the U.S. Department of Labor, rather than the Department of Personnel, is the agency with the statutory responsibility of regulating the FMLA, it is not appropriate for the Board to promulgate detailed procedures for administration of the FMLA. Moreover, each State and local agency may wish to prepare its own procedure manual on the general subject of leaves of absence. However, the Board has decided that the reproposed new rules at N.J.A.C. 4A:6-1.21B should indicate that standardized forms are available from the Federal government for use by employers. It is thus proposed that paragraph (g)4 be revised to reflect this information.

Subsection (h) provides that an employee's leave will count against the employee's entitlement under both Federal and State law, when the reason for the leave is covered by both.

The language in the original proposal for subsection (i) provided for notification by the employer to the employee if the employer designates paid sick leave as FMLA, but a commenter pointed out that other types of paid leave may also fall under FMLA leave. This, and other comments along these lines, prompted the revised language in the reproposed subsection (i). This language states that an employer may designate an employee's paid leave as FMLA leave as long as the employer immediately notifies the employee.

The reproposed new rule at N.J.A.C. 4A:6-1.21B(j) provides an important benefit for State employees. This subsection states that seniority for layoff purposes shall not be deducted during FMLA leave. Federal regulations leave the issue of accrual of seniority during FMLA leave up to the employer (see 29 CFR 825.215). An amendment to N.J.A.C. 4A:8-2.4(c) is also proposed to add FMLA leave to the list of types of leaves not deducted from seniority in State service.

This reproposal also includes amendments to several existing rules. The original proposal included proposed cross references to the proposed new rule on the FMLA in N.J.A.C. 4A:6-1.1 (General provisions), N.J.A.C. 4A:6-1.8 (Pregnancy-disability and child care leave; State service) and N.J.A.C. 4A:6-1.10 (Leave without pay; State service). Several comments on the original proposal were received suggesting that N.J.A.C. 4A:6-1.3 (Sick leave) and N.J.A.C. 4A:6-1.6 (Sick leave injury in State service) should also be amended to include cross references to the FMLA rule. Accordingly, the Board has decided to include such cross references in those rules. In this way, it will be clear that, under certain circumstances, sick leave and sick leave injury may also fall under the FMLA.

Several other suggestions received during the public comment period have been considered by the Board but not acted on. For example, one commenter proposed that the "employer," in the case of the State of New Jersey, should be characterized as the "appointing authority" in situations where some discretion is afforded the employer with respect to employee rights under the FMLA. This is because rights under the FMLA exist, in the first instance, according to whether the employee works for a "covered employer." Public agencies are covered employers without regard to the number of employees (see 29 CFR 825.104). An employer that is a public agency is a State or a political subdivision (see 29 CFR 825.108).

Thus, the Board is not free to modify the scope of FMLA applicability or eligibility by narrowing the definition of "employer" to "appointing authority" in certain instances. However, this does not mean that, as a practical matter, a particular appointing authority such as the Department of Transportation cannot grant FMLA. The communications between employee and appointing authority that are necessary for receipt of FMLA should work as they do for receipt of FLA.

Another commenter proposed that a section be added to the rules stating that a diagnosis is required to accompany all medical documentation submitted for all FMLA and FLA leaves. Certification requirements for State family leave are found in rules promulgated by the Division on Civil Rights, in particular N.J.A.C. 13:14-1.10. Specifically, N.J.A.C. 13:14-1.10(b) provides that an employer "may require that any period of family leave be supported by certification issued by a duly licensed health care provider. . . ." One of the components of the certification is supposed to be "medical facts within the provider's knowledge regarding the condition" (see N.J.A.C. 13:14-1.10(b)1). This language probably encompasses a diagnosis. However, it would not be appropriate for the Board to promulgate specific medical certification provisions for the FLA rule in Title 4A. The cross reference in N.J.A.C. 4A:6-1.21A(c)4 to the FLA certification requirements in N.J.A.C. 13:14-1.10 should be sufficient.

As for the proposed new FMLA rule, it is noted that 29 CFR 825.305 does set forth the circumstances under which certification may be required. The certification information, as reflected in an optional form available from the U.S. Department of Labor, does require a diagnosis for a serious health condition. However, the Board does not believe that an amendment to Title 4A is appropriate on this point, beyond what is provided in the proposed Appendix, which explains general medical certification requirements.

The Board also received some questions concerning the tracking and use of FMLA leave. One commenter asked whether use of FMLA leave for the employee's own serious health condition would be treated the same as sick leave without pay for purposes of entitlement to health benefits. In response, it is the Board's understanding that 12 weeks of FMLA leave without pay for the employee's serious health condition would run concurrently with 12 weeks of leave without pay for personal illness. The employee would receive health benefits for those three months, but if the employee requires additional leave without pay following that period, the employee would have to pay for the continuation of the health insurance under applicable health benefit regulations. If, however, the employee becomes ill again later in the year, the employee will have exhausted the FMLA entitlement but is not precluded from taking another 12 weeks of personal illness leave without pay. Based upon State health benefits procedures, the employee would be provided with continuation of health benefits during that time. However, such additional leave would not come under FMLA protections.

Finally, a question was asked about whether new Personnel Management Information System (PMIS) codes would be formulated for the FLA and FMLA in State service. The Board understands that PMIS can only be used to track unpaid FLA and FMLA. The system that may be used to track all combinations of paid and unpaid FLA and FMLA leave is the Time and Leave Reporting System (TALRS) for use in those State departments which have opted to use this system. Those departments that have not opted to use TALRS must devise their own system to track all combinations of paid and unpaid FLA and FMLA leaves. Political subdivisions must also revise their recordkeeping systems accordingly.

Social Impact

As indicated in the original proposal, the proposed new rule and amendments are intended to provide valuable information about the rights and responsibilities of merit system employees and employers under the new Federal Family and Medical Leave Act (FMLA). It is particularly important that employees and employers understand the interaction between the FMLA and State family leave. To this end, a comparison chart in a proposed Appendix explains the differences and similarities between the two types of leave. A positive social impact should result from the dissemination of this information in an understandable way.

Although these are informational rules, they are consistent with the purpose of both the State family leave and FMLA, which are intended to support family needs and reduce workplace stress caused by family illnesses and child care requirements.

Economic Impact

As noted in the original proposal, there will be certain economic benefits to employees and certain economic costs to employers, such as the preservation of the employee's health benefits while he or she is on FMLA leave. However, these economic impacts result from the underlying Federal law.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed new rule and amendments will have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule and amendments will regulate employment in the public sector.

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

4A:6-1.1 General provisions

(a) In local service, appointing authorities shall establish types of leaves and procedures for leaves of absence.

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1. Pursuant to this subchapter, employees in local service shall also be entitled to vacation leave (N.J.A.C. 4A:6-1.2(b) through (h)); sick leave (N.J.A.C. 4A:6-1.3(a) through (h)); military leave (N.J.A.C. 4A:6-1.11); gubernatorial appointment leave (N.J.A.C. 4A:6-1.12); convention leave (N.J.A.C. 4A:6-1.13); elective office leave (N.J.A.C. 4A:6-1.17); [and] family leave **under State law** (N.J.A.C. 4A:6-1.21A**; and Federal family and medical leave (N.J.A.C. 4A:6-1.21B)**.

2.-4. (No change.)

(b)-(e) (No change.)

4A:6-1.3 Sick leave

(a)-(f) (No change.)

(g) Sick leave may be used by employees who are unable to work because of:

1. Personal illness or injury **(see N.J.A.C. 4A:6-21B for Federal family and medical leave)**;

2. Exposure to contagious disease **(see N.J.A.C. 4A:6-1.21B for Federal family and medical leave)**;

3. Care, for a reasonable period of time, of a seriously ill member of the employee's immediate family (see N.J.A.C. 4A:1-1.3 for definition of immediate family [and], see N.J.A.C. 4A:6-1.21A for family leave **under State law and see N.J.A.C. 4A:6-1.21B for Federal family and medical leave**); or

4. (No change.)

(h-(i) (No change.)

4A:6-1.6 Sick Leave Injury (SLI) requirements: State service

(a) (No change.)

(b) An employee who is disabled due to a work-related injury or illness shall be granted a leave of absence with pay.

1.-3. (No change.)

4. An employee receiving SLI benefits may also be entitled to medical leave under Federal law. See N.J.A.C. 4A:6-1.21B.

(c)-(e) (No change.)

4A:6-1.8 Pregnancy-disability and child care leave: State service

(a) A State employee in the career, senior executive or unclassified service who requests leave with or without pay for reason of disability due to pregnancy shall be granted leave under the same terms and conditions as those applicable to such employees for sick leave or leave without pay. The appointing authority may request acceptable medical evidence that the employee is unable to perform her work because of disability due to pregnancy. **For medical leave under Federal law, see N.J.A.C. 4A:6-1.21B.**

1.-2. (No change.)

(b) Child care leave may be granted to State employees under the same terms and conditions as all other leaves without pay. See N.J.A.C. 4A:6-1.10. For family leave **under State law**, see N.J.A.C. 4A:6-1.21A. **For Federal family and medical leave, see N.J.A.C. 4A:6-1.21B.**

4A:6-1.10 Leave without pay: State service

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

(e) For family leave **under State law**, see N.J.A.C. 4A:6-1.21A. **For Federal family and medical leave, see N.J.A.C. 4A:6-1.21B.**

4A:6-1.21 Family leave

(a) The following two sections include informational provisions on two leave programs: family leave under State law (N.J.A.C. 4A:6-1.21A), and family and medical leave under Federal law (N.J.A.C. 4A:6-1.21B). It is the responsibility of every appointing authority to determine the extent to which one or both leave programs are applicable to the situation of an employee requesting leave, or whether neither program is applicable. If one or both programs are applicable, it is also the responsibility of the appointing authority to record the leaves appropriately and implement the applicable law(s).

(b) Following are examples of the interaction of the FMLA and FLA:

EXAMPLE ONE: A State employee needs to take leave for the birth of a child in 1994 and the birth of another child in 1995. If the employee is eligible for leave under both State and Federal laws, the employee may utilize the 12-week entitlement in 1994, which counts against leave under both laws. The State must comply with applicable provisions of both laws. More generous provisions of the FMLA, such as those on intermittent and reduced leave, apply. However, more generous provisions under State law, such as the retention of seniority, also apply.

In 1995, the employee is not entitled to family leave under State law because State law only permits 12 weeks of family leave in a two-year period. However, the employee is entitled to family leave under Federal law because the FMLA permits a family leave of 12 weeks in a 12-month period.

Leave during 1994 is recorded as both FLA and FMLA. Leave during 1995 is recorded as FMLA only.

EXAMPLE TWO: A municipal employee suffers from a serious health condition which makes the employee unable to perform his job duties. If the employee meets the criteria for eligibility under the FMLA, the employee is therefore entitled to 12 weeks of medical leave. This leave does not count against the employee's entitlement under State law because State law does not provide for leave for an employee's own serious health condition. Therefore, during the same 12-month period, if the employee needs to take leave because of the serious health condition of a child, the employee is entitled to 12 weeks of such leave under State law as long as the employee meets the criteria for eligibility.

EXAMPLE THREE: A State employee is disabled due to her pregnancy and is unable to work. The employee needs to take 12 weeks of leave for this reason. If the employee is eligible for medical leave under the FMLA, then the 12 weeks of pregnancy-disability leave will count toward her FMLA entitlement for that 12-month period. If she thereafter wishes to take 12 weeks of leave to care for her new child and is eligible for family leave under State law, she may then take 12 weeks of family leave. However, if the employee needs additional leave for child care, she may apply for leave without pay for this additional leave. The appointing authority may, but is not required to, grant such additional leave, since the employee has exhausted her leave entitlements under both State and Federal law. See N.J.A.C. 4A:6-1.10.

EXAMPLE FOUR: Joe is employed by the State Department of Insurance. His wife Jill is employed by the Department of State. Joe takes three weeks of leave to care for his seriously ill mother. Jill takes three weeks of leave to care for her newborn child. These three weeks are recorded on both of their records as State family leave (FLA) and Federal family leave (FMLA). They have remaining a combined total of six weeks of FMLA leave if used to care for their newborn child. However, if either is unable to work due to a serious health condition, each has nine weeks of FMLA leave remaining for that purpose. Each has nine weeks of FLA remaining.

EXAMPLE FIVE: An employee gives birth to a child on January 1. On November 1, she commences leave to care for her child, and completes this leave 12 weeks later. Her leave through December 31 is recorded as both FLA and FMLA. After December 31, the leave is recorded only as FLA.

EXAMPLE SIX: An employee takes in a foster child on December 1. He wishes to take a leave to care for the child commencing the following November 1. This leave is recorded as FMLA only, and only lasts through the end of November.

EXAMPLE SEVEN: An employee's wife gives birth on January 1. He commences leave on January 10. This leave is recorded as both FLA and FMLA, for a 12 week total.

EXAMPLE EIGHT: John is covered under a negotiations agreement. He has taken 12 weeks of leave, to end on December 31, 1993 because of his own serious health condition. Then he has a relapse and, on February 10, 1994, requires further leave. The leave does not fall under the FLA at all. Prior to February 5, 1994, the leave is also not recorded as FMLA. The leave commencing on February 10, 1994 is recorded as FMLA.

EXAMPLE NINE: Susan is a nonrepresented managerial employee who commences leave on July 1, 1993 for care of a newborn and needs leave for the next 15 weeks. From July 1 through August 4, the leave is recorded as FLA only. From August 5 through

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September 22 (12 weeks after July 1) the leave is recorded as FLA and FMLA. From September 23 through October 13, this leave is recorded as FMLA only.

EXAMPLE TEN: Robert is taking six weeks of paid sick leave for major surgery and recuperation from the surgery. Robert has informed his employer about the reason for his leave. His employer has designated this paid sick leave as FMLA leave. Immediately upon doing so, the employer also notifies Robert of this designation.

4A:6-[1.21]1.21A [Family] State family leave
(a)-(j) (No change.)

4A:6-1.21B Federal family and medical leave

(a) The Federal Family and Medical Leave Act (FMLA), 29 U.S.C. 2601 et seq., was effective on August 5, 1993, except for employees covered under a collective negotiations agreement, for whom the Act is effective on February 5, 1994, or the date the agreement expires, whichever is sooner. This section is for informational purposes only, and addresses areas in which FMLA provisions differ from those under the State Family Leave Act (FLA). See N.J.A.C. 4A:6-1.21A. The U.S. Department of Labor has promulgated rules to implement and enforce the FMLA. See 29 CFR 825.

(b) Definitions, unique to this section, are as follows:

1. "Eligible employee" means an employee of the State or a political subdivision who has worked for the employer for at least 12 months for a minimum of 1,250 hours. In determining whether an employee meets this hours of service requirement, work not requested by an employer but suffered or permitted is work time for purposes of meeting this requirement. See 29 U.S.C. 207; 29 CFR 785.11.

2. "Family leave" means a type of FMLA leave to which an eligible employee is entitled if the employee meets the conditions set forth in (d)1 or (d)2 below.

3. "Medical leave" means a type of FMLA leave to which an employee is entitled if the employee meets the conditions set forth in (d)3 below.

4. "Parent" means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child. This term does not include parents "in law."

5. "Serious health condition" is an illness, injury, impairment, or physical or mental condition that involves:

i. Any period of incapacity or treatment in connection with or resulting from inpatient care in a hospital, hospice, or residential medical care facility;

ii. Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than three calendar days, that also involves continuing treatment by a health care provider; or

iii. Continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; or for prenatal care.

(c) Public agencies, including the State of New Jersey and political subdivisions, are covered employers without regard to the number of employees employed.

(d) An eligible employee of a covered employer is entitled to 12 weeks of FMLA leave in a 12-month period:

1. Because of the birth of a child or the placement of a child for adoption or foster care, except that the entitlement expires at the end of the 12-month period beginning on the date of birth or placement;

2. Because the employee is needed to care for a child, spouse or parent with a serious health condition; or

3. Because the employee's own serious health condition makes the employee unable to do his or her job.

(e) In State service, the 12-month period begins on the first day of FMLA leave.

(f) Leave may be taken intermittently or on a reduced leave schedule when medically necessary in the case of an employee who has a serious health condition or in the case of a child, spouse or parent who has a serious health condition.

1. Intermittent leave may last for as little as one hour or for as long as several weeks. A reduced leave schedule reduces the employee's hours per workweek or workday. No limit may be placed on the size of an increment of such leave, except that an employer may limit leave increments to the shortest period of time that the employer's payroll system uses to account for use of leave.

2. An employee may take leave in this manner for the birth or placement of a child for adoption or foster care only if the employer agrees.

(g) Special conditions related to FMLA leave are as follows:

1. A husband and wife who both work for the same employer are permitted to take a combined total of 12 weeks of FMLA leave in a 12-month period for the birth or placement for adoption or foster care of a child or to care for a parent with a serious health condition. However, following the use of a portion of the 12-week leave entitlement for one of these purposes, the husband and wife will each be entitled to the difference between the leave taken individually by them and their 12-week entitlement if the additional leave is for a different FMLA purpose (such as their own serious health condition).

2. Employers shall keep FMLA records for no less than three years and shall make them available for inspection, copying and transcription by representatives of the U.S. Department of Labor upon request. These records shall include all of the following:

i. Basic payroll and identifying employee data;

ii. Dates FMLA leave is taken by employees. FMLA leave shall be designated as such in the employer's records and shall not be placed in the same category as other leaves. A general designation, such as "sick leave," does not fulfill this requirement;

iii. The hours of the FMLA leave, if the leave is taken in increments of less than one full day;

iv. Copies of employee notices of leave which fall under the FMLA;

v. Copies of all general and specific notices given to employees as required under the FMLA and 29 CFR 825.300 et seq.;

vi. Any written or electronic documents describing employee benefits or employer leave policies outside of leave provisions found in N.J.A.C. 4A:6 et seq.;

vii. Premium payments of employee benefits; and

viii. Records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and for the disagreement.

3. If the employer has a uniformly applied policy governing outside employment, such a policy may continue to apply to an employee while on FMLA leave. Otherwise, an employer may not deny benefits to an employee who is entitled to leave because the employee has outside employment.

4. The enforcing agency for FMLA leave is the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. Any complaints related to this leave shall be made to that agency. Standardized forms are available from that agency for use by employers.

(h) If an employee qualifies under both Federal and State law, the leave used counts against the leave's entitlement under both laws, provided that nothing in the FMLA supersedes any provision of State law that provides greater rights than those provided under the FMLA, and further provided that rights under the FMLA shall not be diminished by State law.

(i) An employer may designate an employee's paid leave as FMLA leave if the employee provides information to the employer indicating an entitlement to such leave. The employer shall immediately notify the employee that the paid leave has been designated as FMLA leave.

(j) In State service, FMLA leave without pay shall not be deducted from seniority for layoff purposes. For all other purposes, FMLA leave without pay shall be treated the same as other leaves without pay.

4A:8-2.4 Seniority
(a)-(b) (No change.)

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(c) The following types of leaves shall not be deducted from seniority calculations: all leaves with pay including sick leave injury (SLI); military, educational, gubernatorial appointment, personal sick, disability, [family] and voluntary alternative to layoff leave without pay; **family leave without pay under State law and, in State service, family and medical leave without pay under Federal law;** and in local service, leave to fill elective public office. Suspensions, other leaves of absence without pay and any period an employee is laid off shall be deducted in calculating seniority.

(d)-(g) (No change.)

APPENDIX

Major Provisions of Federal and State Family and Medical Leave Laws

	Federal	New Jersey	
Issues	**Enforced by U.S. Dept. of Labor**	**Enforced by Division on Civil Rights, Dept. of Law and Public Safety**	**Most Favorable to Employees**
Employers Covered	**Employers of 50 or more employees in at least 20 weeks of the current or preceding year**	**Similar**	**Comparable**
Employees Eligible	**Have worked for employer at least 1,250 hours in preceding 12 months and employed for at least 12 months; and employed at worksite by employer with 50 or more employees within 75 miles of that worksite**	**Have worked for employer at least 1,000 hours in preceding 12 months and employed for at least 12 months**	**New Jersey**
Amount of Leave	**12 weeks during a 12-month period** **Leave for birth, adoption, or to care for sick parent must be shared by spouses working for same employer**	**12 weeks during a 24-month period** **No reduction in leave requirement for spouses working for same employer**	**Federal, except for leave sharing requirement for spouses**
Type of Leave	**Birth, adoption or foster care; to care for parent, child or spouse with serious health condition, or employee's own serious health condition**	**Birth or adoption, serious health condition of parent, parent of spouse, child or spouse.**	**Federal for coverage of employee's own serious health condition** **New Jersey for coverage of in-laws**
Serious Health Condition	**Means illness, injury, impairment, or physical or mental condition involving incapacity or treatment connected with inpatient care in hospital, hospice, or residential medical-care facility; or, continuing treatment by a health care provider involving: (1) incapacity or absence of more than 3 days from work, school or other activities; (2) chronic or long-term condition incurable or so serious if not treated would result in incapacity of more than 3 days; or (3) prenatal care.**	**Means illness, injury, impairment, or physical or mental condition which requires inpatient care in a hospital, hospice or residential medical treatment or continuing supervision by a health care provider**	**Comparable**
Health Care Provider	**Means doctors of medicine or osteopathy authorized to practice medicine or surgery in the State; podiatrists, dentists, clinical psychologists, optometrists, chiropractors (for manual manipulation of spine to correct subluxation demonstrated by X-ray), nurse practitioners, and nurse-midwives, if authorized to practice under State law; or, Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts**	**Means any person licensed under Federal, State or local law, or the laws of a foreign nation, to provide health services, or any other person who has been authorized to provide health care by a licensed health care provider**	**Federal**

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Intermittent Leave	Permitted for serious health condition when medically necessary. Not permitted for birth or adoption unless employer agrees	Not permitted unless employer and employee agree	Federal in cases of serious health condition
Substitution of Paid Leave	Employee may elect or employer may require accrued paid leave to be substituted in some cases. No limits on substituting paid vacation or personal leave. Employee may not substitute paid sick, medical, or family leave for any situation not covered by employer's leave plan.	Similar	Comparable
Reinstatement Rights	Must be restored to same or equivalent position in all terms and conditions	Similar	Comparable
Key Employee Exception	Exempts salaried employees if among highest paid 10 percent and if restoration would cause grievous economic harm to employer	Exempts highest paid five percent of employees or one of the seven highest paid employees, whichever is greater, if restoration would lead to substantial economic injury to employer.	New Jersey in most cases
Maintenance or Health Benefits During Leave	Health insurance must be continued under same conditions as prior to leave	Similar provision in New Jersey has been held to be preempted by ERISA in an April 1, 1991 Superior Court of New Jersey ruling.	Federal
Leave Requests	Made by employee 30 days in advance or as soon as practicable	Made by employee 30 days in advance or as soon as practicable for birth or adoption, 15 days in advance or as soon as practicable for serious health condition.	Comparable for birth or adoption New Jersey for serious health condition
Medical Certification May Be Required By Employer To Support:	Request for leave because of serious health condition	Similar for serious health condition of family member. Certification may also be required for the birth or placement of a child.	Federal
	Employee's fitness to return to work from medical leave	Not applicable, law does not provide leave for employee's own serious health condition.	Not Applicable
Executive, Administrative and Professional Employees	Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to "eligible" employees' use of leave required by FLMA.	Unpaid leave would not result in loss of exempt status under State minimum wage and overtime law	Comparable

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(a)

MERIT SYSTEM BOARD

Layoffs

Proposed Readoption with Amendments: N.J.A.C. 4A:8

Authorized By: Merit System Board, Linda M. Anselmini, Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:2-6(d), 11A:2-11(h), 11A:4-7, 11A:4-9, 11A:4-12, 11A:6-28, 11A:8-1 through 11A:8-4.

Proposal Number: PRN 1994-485.

Public hearings concerning the proposed readoption with amendments will be held on:

Thursday, September 22, 1994 at 6:00 P.M.
Auditorium
Essex Catholic Boys High School
135 Glenwood Avenue
East Orange, New Jersey

Thursday, September 29, 1994 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza
Hamilton Township, New Jersey

Tuesday, October 4, 1994 at 6:00 P.M.
Cafeteria
Howard Phifer Middle School
8201 Park Avenue
Pennsauken, New Jersey

Please call the Regulations Unit at (609) 292-6568 if you wish to be included on the list of speakers.

Submit written comments by October 6, 1994 to:

Janet Share Zatz
Director of Appellate Practices and Labor Relations
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 4A:8 expires on January 16, 1995. The Merit System Board has reviewed the rules and, with the following exceptions, has found them to be necessary, reasonable and proper for the purposes for which they were originally promulgated, as required by the Executive Order.

Subchapter 1 concerns layoff procedures to be followed by State agencies and by those political subdivisions subject to Title 11A, of the New Jersey Statutes. The subchapter describes the entire process, starting with pre-layoff actions and ending with post-layoff appeals.

N.J.A.C. 4A:8-1.1 explains the division of authority concerning layoff actions. The rule provides that the decision to institute a layoff action rests with the individual appointing authority, while the responsibility for determining the rights of all affected employees remains with the Department of Personnel. A proposed amendment at N.J.A.C. 4A:8-1.1(a)1 would codify existing practice that non-disciplinary, involuntary demotions are to be treated as layoff actions and are subject to the rules in this chapter.

N.J.A.C. 4A:8-1.2 describes alternative measures available to appointing authorities to lessen the possibility of layoffs. Voluntary furloughs have been added as an additional option, consistent with the newly proposed rule (see 26 N.J.R. 2179(a)). In addition, paragraph (c)1 has been amended to clarify that Department of Personnel approval is required for a program of granting leaves without pay (which may be longer than voluntary furloughs) without loss of seniority.

In addition to alternative measures, all of which require employee consent, N.J.A.C. 4A:8-1.3 provides for pre-layoff actions to lessen the possibility, extent or impact of layoffs. The Board proposes that reducing workweeks in State service be added as an additional pre-layoff option (see N.J.A.C. 4A:8-1.3(a)4).

N.J.A.C. 4A:8-1.4 describes the role of the Department of Personnel in reviewing appointing authority actions prior to the issuance of layoff notices to employees. This section includes a comprehensive listing of the information that must be provided to the Department of Personnel at least 30 days before the issuance of layoff notices, and explains the remedial action the Department may take upon receipt, or in the absence of timely receipt, of this information. Under the current rules, some appointing authorities have interpreted paragraph (a)7 to mean that a general statement is sufficient regarding the inapplicability of alternative and pre-layoff actions. Such general statements do not provide the Department of Personnel with sufficient information to review layoff plans. Accordingly, the Board proposes at N.J.A.C. 4A:8-1.4(a)7 that instead of a summary, appointing authorities be required to provide a detailed explanation of all alternative and pre-layoff actions that have been taken, or have been considered and determined inapplicable. It is also proposed at N.J.A.C. 4A:8-1.4(a)9 that appointing authorities provide a list of affected negotiations representatives. This information is needed to implement proposed new subsection (e), whereby the Department of Personnel will provide affected negotiations representatives with a copy of the approved layoff plan. Prior to approval by the Department of Personnel, however, the layoff plan will not be released to unions or individual employees. Finally, the Board proposes an amendment to subsection (b) that provides for the submission of names of employees who have received a rating of either Marginally Below Standards or Significantly Below Standards. This information is required in order to implement changes in subchapter 2, as described below.

N.J.A.C. 4A:8-1.5 defines the unit of government in which layoffs, and the resulting displacement of employees, are to be confined. In State service, the layoff unit remains an entire department or autonomous agency. An amendment has been proposed at N.J.A.C. 4A:8-1.5(a) to clarify the term "autonomous agency." In a county or municipality, the layoff unit is a department, unless a different layoff unit consisting of one or more departments is approved by the Commissioner of Personnel. A change is proposed in subsection (c) to provide that in State service, a job location shall consist of an entire county. However, cross-references to N.J.A.C. 4A:8-2.2 and 2.3 have been inserted to emphasize that certain displacement options remain within the municipality in which the employee's facility or office is located (see N.J.A.C. 4A:8-1.5(c)3).

The requirements for notice of layoff are set forth in N.J.A.C. 4A:8-1.6. An amendment proposed at N.J.A.C. 4A:8-1.6(a) would provide that such notices are to be served personally, and that certified mail is to be used only if the employee is on a leave of absence or otherwise unavailable. The proposed amendment further provides that if service is by certified mail, the 45 days shall be counted from the first date of notice by the Postal Service to the employee.

Subchapter 2 defines the rights afforded employees in a layoff action and explains the exercise of those rights in State and local service. N.J.A.C. 4A:8-2.1 describes the three types of rights of employees affected by a layoff action: lateral title rights, demotional title rights and special reemployment rights. The current rule defines lateral and demotional title rights in terms of displacing "the least senior employee at a selected job location." Since this language does not apply to every situation, a proposed amendment at N.J.A.C. 8-2.1(a) and (b) would define these terms as the right to "exercise displacement rights as set forth in N.J.A.C. 4A:8-2.2 against an employee." The Board also proposes a new subsection (d) concerning the newly established "Specialized Credential" variant title. When an employee holds such a title, title rights will be based on the particular special credential (such as a license or advanced degree).

In N.J.A.C. 4A:8-2.2, Exercise of lateral and demotional rights, an amendment is proposed to subsection (a) in conjunction with the change to county-wide job locations in State service. Under this proposed amendment, an employee would first have the option to exercise lateral and demotional rights within the municipality in which the facility or office is located, and then to other job locations selected by the employee. For example, if an employee is displaced from a job in a department's central office in Trenton, the employee would first have the option of exercising lateral and demotional rights to other jobs located in Trenton. If no position is available in Trenton, the employee would be given lateral and demotional rights to those counties specified by the employee in which he or she would accept a position. In subsection (c), an amendment is proposed in the order of exercising lateral and demotional rights, based upon changes previously made in the Performance Assessment Review (PAR) program in State service. The amendment would provide that displacement rights would be exercised, following a position held by a probationary employee, against a position held by a permanent employee with a PAR rating of Five (Significantly Below Standards), and then against a position held by a permanent employee with a PAR rating

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of Four (Marginally Below Standards). The Board also proposes to delete subsection (e) as redundant, since this restriction is covered in subsection (c).

Further changes are proposed to N.J.A.C. 4A:8-2.2 to address specific situations that arise in the exercise of lateral and demotional rights. A new subsection (e) is proposed that provides that when an employee in a professional title has demotional rights to a para-professional or non-professional title, or from a para-professional title to a non-professional title, displacemnt takes place only if that employee has greater permanent continuous service than the employee in the lower title. Subsection (f) addresses the situation where an employee is granted rights to a previously held title, which is outside of the demotional path of the employee's current title. Three changes are proposed to this subsection: First, such rights are limited to a title held within the employee's last 10 years of service. Second, such rights will not be granted when the employee has either lateral rights, or demotional rights to a title with a higher class code than the previously held title. Third, when a provisional or probationary employee is serving in the previously held title, displacement will take place even if that provisional or probationary employee has greater permanent continuous service than the employee exercising "previously held title" rights. The Board also proposes to delete subsection (g), since employees in intermittent titles are subject to furlough procedures set forth in N.J.A.C. 4A:3-3.8, and not the procedures and rights in this chapter. Finally, a new subsection (g) is proposed that would provide that employees who are placed in trainee titles as a result of a layoff action must serve a complete training period if that trainee title is outside of the title series from which the employee was laid off.

In N.J.A.C. 4A:8-2.3, Exercise of special reemployment rights, amendments are proposed to subsection (a) based upon the change to county-wide job locations in State service. Under the first amendment, an employee displaced from the municipality in which his or her facility or office was located would have the option to exercise special reemployment rights to that municipality in addition to other job locations selected by the employee. For example, if an employee is displaced from a job in a department's central office in Trenton to a job in Ewing Township (Mercer County), the employee may exercise special reemployment rights to a job vacancy that occurs in Trenton. In addition, the current language referring to a job location which "no longer exists" does not make sense in view of the change to county-wide job locations. Therefore, the new language refers to cases where "no facility or office remains" in the original job location, in other words, no facility or office remains in the county in which the employee worked.

Additional changes in N.J.A.C. 4A:8-2.3 include the deletion of subsection (e), which concerns intermittent employees. As explained above, intermittent employees are subject to separation from employment through a different process. A new subsection (e) is proposed that describes the treatment of employees who decline reemployment. This provision distinguishes between those who decline reemployment to a particular job and those who are unavailable for any job due to temporary disability or other good cause.

In N.J.A.C. 4A:8-2.4, the Board proposes two important amendments in the way seniority is defined and calculated. First, in subsection (a), seniority would be based on length of continuous permanent service in the jurisdiction (for example, State government) rather than length of permanent service in one or more titles. A resignation/new appointment under N.J.A.C. 4A:4-7.9 would not constitute a break in continuous service. Second, in subsection (b), in State service, seniority would include credit for performance evaluations. Such credit would be awarded in a manner similar to the system used for promotional examination: three years' credit for a rating of One (Significantly Above Standards); two years' credit for a rating of Two (Exceeds Standards); and one year's credit for a rating of Three (Meets Standards). If no final rating is on file, the rating for that period shall be deemed Meets Standards and credit given for that rating.

The Board also proposes a change in the method of granting "preferred seniority." Under this proposed amendment to N.J.A.C. 4A:8-2.4(c), employees who are demoted in a layoff action will carry forward their credit for PAR ratings in a subsequent layoff action. An example has been added to illustrate how this provision would be applied.

N.J.A.C. 4A:8-2.4(c), the current subsection on treatment of leaves of absence, has been rewritten for clarity in two new subsections (d) and (e). Substantively, three situations have been added to those for which no seniority deductions are made: voluntary furloughs; leaves without pay to accept an unclassified appointment; and employment in the Senior Executive Service for those who had permanent service prior to the SES appointment.

In addition, the current N.J.A.C. 4A:8-2.4(e) would be deleted, since there is no need to address aggregate title seniority in a jurisdiction-seniority system. Finally, the current subsection (g) on tie-breakers has been recodified as subsection (h) and revised to address the changes described above in the way seniority is defined and calculated.

In N.J.A.C. 4A:8-2.5, the general restriction on reassignments, has been modified to apply only to specified types of involuntary reassignments. Further, when these types of reassignments occur on a voluntary basis, union representatives are to be notified and should be consulted upon request (see N.J.A.C. 4A:8-2.5(b)).

N.J.A.C. 4A:8-2.6 describes the procedures to be followed when an employee wishes to appeal either the "good faith" of a layoff action or the determination of layoff rights. No amendments are proposed to this section.

Social Impact

The proposed readoption with amendments of N.J.A.C. 4A:8 includes several substantive changes which will have an impact on the way reductions in force are implemented in State and local government. In addition, technical changes will clarify the process, enhancing the understanding among public employers and employees and reducing disputes and appeals.

Among the substantive changes, the proposed amendment to N.J.A.C. 4A:8-1.3 adds an additional pre-layoff option in State service, thus adding another method to lessen the need of layoffs. The amendments to N.J.A.C. 4A:8-1.4(a) will strengthen the ability of the Department of Personnel to perform an effective review of an agency's layoff plan. Providing a copy of the approved layoff plan to union representatives, as set forth in the proposed new subsection N.J.A.C. 4A:8-1.4(e), will improve communications to employees about an impending reduction in force.

A review of the Fiscal Year 1993 layoffs in State government found that over half of the lateral displacements from one job location to another took place within the same county. Therefore, the proposed amendment to N.J.A.C. 4A:8-1.5(c)1 providing for county-wide job locations in State service should reduce the "bumping" that occurs during a layoff. However, the Department of Personnel is aware that displacement within a county may be a hardship for some employees, particularly those who rely on public transportation. Therefore, along with the change to county-wide job locations, proposed amendments to N.J.A.C. 4A:8-2.2 and 2.3 provide that employees will have the option to exercise lateral, demotional and special reemployment rights first within the municipality in which the employee's facility or office is located.

The proposed amendment to N.J.A.C. 4A:8-1.6, Layoff notice, will clearly indicate that personal service is the preferred method of providing an employee with notice of a layoff. If an employee is on a leave of absence or otherwise unavailable for personal service, and certified mail is used instead, the employee will also have a full 45 days' notice, since the 45 days will be counted from the date of notice by the Postal Service.

Extending demotional rights to a "previously held title" provides a valuable option for some employees, but it also has a negative impact on other employees who would not ordinarily be affected by a layoff action. The proposed amendments to N.J.A.C. 4A:8-2.2(f) would ensure that such extended rights will not be granted when the employee has superior options through the exercise of lateral or demotional rights. Moreover, since most jobs change over time and an employee may have difficulty performing a job which he or she last performed many years ago, "previously held title" rights will be limited to a title held within an employee's last ten years of service. It should be noted that in evaluating experience in examinations, the Department of Personnel does not count experience more than ten years old.

Demotional rights are occasionally granted from a professional title to a para-professional or non-professional title. These situations are similar in some respects to the exercise of "previously held title" rights. Therefore, proposed new subsection N.J.A.C. 4A:8-2.2(e) contains a similar restriction: displacement may be made only on the basis of greater permanent continuous service.

Special reemployment lists have unlimited duration, pursuant to statute see N.J.S.A 11A:4-7. Individuals have often remained on these lists for years, even after indicating lack of interest in reemployment by declining appointment at the time of certification. Accordingly, the

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proposed new subsection N.J.A.C. 4A:8-2.3(e) would ensure that special reemployment lists contain only the names of those individuals who retain a genuine interest in reemployment to that job.

The change from title seniority to jurisdiction seniority, as set forth in the proposed amendment to N.J.A.C. 4A:8-2.4(a), will have a two-fold impact. First employees with many years of service for a jurisdiction will get credit for that service in a layoff action, even if they have relatively little time in their latest job title. Second, the process of calculating seniority will become less complex, thus making layoff actions easier to administer for appointing authorities and the Department of Personnel.

N.J.S.A. 11A:6-28 authorizes the Merit System Board to adopt and enforce rules with respect to the utilization of performance ratings in layoffs. Consistent with this statutory provision, the proposed amendments to N.J.A.C. 4A:8-2.4, Seniority, will give an expanded role to performance ratings in the layoff process. By adding credit to seniority based on PAR ratings, employees who have demonstrated superior performance will have a lesser chance of being demoted or laid off. Moreover, even if such employees are demoted, the modification in preferred seniority will lessen the chances that such employees will be demoted again or laid off in a subsequent reduction in force.

When career service employees have the opportunity for advancement to the Senior Executive Service or a high-level unclassified appointment, they should not be discouraged by the loss of seniority. Accordingly, the proposed new subsection N.J.A.C. 4A:8-2.4(d) provides that such types of service will not be deducted from seniority.

The proposed amendments to N.J.A.C. 4A:8-2.5, Reassignments, are based on the experience of the State service layoffs in Fiscal Years 1992 and 1993. These amendments will ensure that an appointing authority does not negate all of the displacements resulting from a layoff, while providing significant flexibility to appointing authorities and employees to establish acceptable work patterns following the layoff.

In addition to the proposed amendments described above, the rules in N.J.A.C. 4A:8 proposed for readoption without change will continue to provide a regulatory framework for reductions in force. In the absence of readoption of this chapter, merit system employers and employees would have no guidance on layoffs, other than the provisions of Title 11A, of the New Jersey Statutes.

Economic Impact

The proposed amendments are intended to improve the clarity of these rules, and thus reduce costs by lessening the number of disputes and appeals arising from the layoff process. The change from title seniority to jurisdiction seniority should also reduce the costs of administering a layoff, since seniority calculations will be easier under the new system.

The expanded role of performance ratings will have a positive economic impact on State employees with higher PAR ratings. Such employees will have increased job security due to the ability to add seniority credit based on their PAR ratings. These changes should also have a positive economic impact on State agencies, who will have a better chance to retain their most productive employees.

The rules proposed for readoption without change continue to provide a fair and equitable system for implementing reductions in force in State and local service. The rules continue to emphasize methods to reduce costs without resorting to layoffs, or to lessen the impact of layoffs when reductions in force are unavoidable.

If this chapter is not readopted, there would be a severe negative impact on public employers and employees, as well as the taxpaying public. Since the provisions of Title 11A of the New Jersey Statutes, provide only broad, general guidance on layoffs, costly litigation would be needed to resolve disputes concerning the application of these statutory provisions.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since this proposed readoption with amendments will have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A 52:14B-16 et seq. The rules as amended will regulate employment in the public sector.

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

CHAPTER 8
LAYOFFS

SUBCHAPTER 1. PROCEDURES

4A:8-1.1 General

(a) An appointing authority may institute layoff actions for economy, efficiency or other related reasons.

1. Demotions for economy, efficiency or other related reasons shall be considered layoff actions and shall be subject to the requirements of this chapter.

(b) The Commissioner or authorized representative of the Department of Personnel shall determine seniority and designate lateral, demotional and special reemployment rights for all career service titles prior to the effective date of the layoff and have such information provided to affected parties.

4A:8-1.2 Alternatives to layoff

(a) In State service, appointing authorities shall lessen the possibility of layoffs by offering and implementing, as appropriate, voluntary alternatives.

(b) In local service, appointing authorities should lessen the possibility of layoffs by considering voluntary alternatives.

(c) Alternatives to layoff may include, but are not limited to:

1. Granting of leaves of absence without pay to permanent employees, without loss of seniority for purposes of this Title[:], **subject to the approval of the Department of Personnel;**

2. Granting voluntary furloughs to employees (see N.J.A.C. 4A:6-1.23);

[2.]**3.** Allowing voluntary reduction of work hours by employees, which may include job sharing arrangements;

[3.]**4.** Providing employees with optional temporary demotional title changes; and

[4.]**5.** Other appropriate actions to avoid a layoff.

(d) Employee participation in alternatives is voluntary. Should a layoff occur despite alternative measures, employee layoff rights shall not be diminished by their participation in any such alternative measure; that is, the employee will be considered to have been serving in the original title and earning seniority in that title.

(e) Appointing authorities should consult with affected negotiations representatives prior to offering alternatives to layoff.

(f) Appointing authorities shall submit a plan for alternatives to layoff and obtain approval from the Department of Personnel prior to implementation. The plan shall include time periods for all alternatives, a statement of employee's right to be restored to prior status should a layoff occur during such time periods, and summaries of employee status and salary at the conclusion of time periods.

4A:8-1.3 Pre-layoff actions

(a) Appointing authorities shall lessen the possibility, extent or impact of layoffs by implementing, as appropriate, pre-layoff actions which may include, but are not limited to:

1. Initiating a temporary hiring and/or promotion freeze;
2. Separating non-permanent employees;
3. Return provisional employees to their permanent titles;

4. In State service, reducing workweeks, for example, from 40 to 35 hours (see N.J.A.C. 4A:4-7.6(d));

[4.]**5.** Reassigning employees; and

[5.]**6.** Assisting potentially affected employees in securing transfers or other employment.

(b) Appointing authorities should consult with affected negotiations representatives prior to initiating measures under this section.

(c) Upon request by an appointing authority, assistance may be provided by the Department of Personnel in implementing pre-layoff measures.

(d) The appointing authority shall to the extent possible lessen the impact of any layoff action on permanent employees by taking pre-layoff actions which first place employees wtihout permanent status, and then those with the least seniority, in positions being vacated, reclassified or abolished.

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4A:8-1.4 Review by Department of Personnel

(a) At least 30 days prior to issuance of layoff notices, or such other period as permitted by the Department of Personnel, the following information shall be submitted by an appointing authority to the Department of Personnel:

1. The reason for the layoff;

2. The projected effective date of layoff;

3. Sample copies of the layoff notice and the projected date for issuance;

4. Any seniority listings maintained including records of preferred seniority maintained by the appointing authority pursuant to N.J.A.C. 4A:8-2.4(b)2;

5. The number of positions (including position numbers in State service) by title to be vacated, reclassified, or abolished and the names, status, layoff units, locations and, as of the effective date of the layoff, permanent titles of employees initially affected, including employees on leave;

6. The vacant positions in the layoff unit (including position numbers in State service) that the appointing authority is willing to fill as of the effective date of the layoff;

7. A [summary] **detailed explanation** of **all** alternative and prelayoff actions that have been taken, or have been considered and determined inapplicable; [and]

8. A summary of consultations with affected negotiations representatives[.]**; and**

9. A list of affected negotiations representatives, including addresses and the units they represent.

(b) In State service, and in local jurisdictions having a performance evaluation program approved by the Department of Personnel, the appointing authority shall also submit the names of permanent employees who have received [an unsatisfactory] **a rating of Marginally Below Standards or Significantly Below Standards** or equivalent [rating] in their permanent title within the 12-month period preceding the effective date of the layoff.

(c) Following submission of the information required in (a) above, all vacant positions identified in (a)6 above shall be filled, except under exceptional circumstances with the approval of the Commissioner, and may only be filled through layoff procedures.

(d) Upon review of the information required to be submitted in (a) and (b) above, or in the absence of timely submission of such information, the Commissioner may take appropriate remedial action, including:

1. Requiring submission of additional or corrected information;

2. Providing needed assistance to the appointing authority;

3. Directing implementation of appropriate alternative or prelayoff measure; or

4. Directing necessary changes in the layoff notice, which may include the effective date of the layoff.

(e) Upon approval of the layoff plan, the Department of Personnel shall provide affected negotiations representatives with a copy of the plan as it affects their represented employees.

4A:8-1.5 Layoff units and job locations

(a) In State service, the layoff unit shall be a department or autonomous agency and include all programs administered by that department or agency. **An autonomous agency is one which is in, but not under the supervision of, a principal department.**

(b) In local service, the layoff unit shall be a department in a county or municipality, an entire autonomous agency (see N.J.A.C. 4A:8-2.1(c)1i), or an entire school district. However, prior to the time set by N.J.A.C. 4A:8-1.4 for submission of information to the Department of Personnel, a different layoff unit consisting of one or more departments may be approved by the Commissioner under the following procedures:

1. A request may be submitted by an appointing authority to the Commissioner or the matter may be initiated by the Commissioner.

2. Notice of the request shall be provided by the appointing authority to affected negotiations representatives upon submission to the Commissioner.

3. After receipt of the request, the Commissioner shall specify a period of time, which in no event shall be less than 20 days, during which affected employees and negotiations representatives may submit written comment and recommendations.

4. Thereafter, the Commissioner shall issue a determination approving, modifying or rejecting the proposed layoff unit, after considering:

i. The need for a unit larger than a department;

ii. The functional and organizational structure of the local jurisdiction;

iii. The number of employees, funding source and job titles in the proposed unit;

iv. The effect upon employee layoff rights; and

v. The impact upon service to departmental clientele and the public.

(c) In State service, the Commissioner of Personnel shall determine job locations within each department or autonomous agency.

1. [Job locations may consist of named facilities or geographical areas.] **Each job location shall consist of a county.**

2. The Commissioner of Personnel shall assign a job location to every facility **and office** within a department or autonomous agency.

3. See N.J.A.C. 4A:8-2.2 for exercise of lateral and demotional rights within job locations. See N.J.A.C. 4A:8-2.3 for exercise of special reemployment rights within job locations.

(d) In local service, the entire political subdivision is the job location and includes any facility operated by the political subdivision outside its geographic borders.

4A:8-1.6 Layoff notice

(a) No permanent employee or employee serving in a working test period shall be separated or demoted as a result of a layoff action without having been served by the appointing authority, at least 45 days prior to the action, with a written notice [either] personally [or]**, unless the employee is on a leave of absence or otherwise unavailable, in which case** by certified mail. If service is by certified mail, the 45 days shall be counted from the [date of mailing] **first date of notice by the United States Postal Service to addressee.** A notice shall also be conspicuously posted in all affected facilities of the layoff unit. A copy of the notice served on employees shall be provided to the Department of Personnel and affected negotiations representatives.

1. In State service, the Commissioner may order a greater period of time for written notice to employees.

(b) The notice shall contain the following:

1. The effective date of the layoff action; and

2. The reason for the layoff.

(c) The appointing authority shall be responsible for keeping records of those employees receiving the layoff notice.

(d) A layoff shall not take place more than 120 days after service of the notice unless an extension of time is granted by the Commissioner for good cause. If a layoff has not taken place within 120 days of service of the notice, and no extension has been granted, new notices must be served at least 45 days prior to the effective date of the layoff.

(e) Layoff rights and related seniority determinations (see N.J.A.C. 4A:8-2) shall be based upon the scheduled effective date of a layoff. These determinations shall remain applicable even if the effective date of the layoff is extended. However, when the scheduled effective date is extended, the appointing authority shall notify the Department of Personnel of employees who successfully complete their working test periods prior to displacement. The Department of Personnel shall then redetermine only the special reemployment rights to reflect the newly attained permanent status.

(f) Following determination of layoff rights by the Department of Personnel, permanent and probationary employees affected by a layoff action shall be served with a final written notice of their status, including a statement of appeal rights.

SUBCHAPTER 2. EMPLOYEE LAYOFF RIGHTS

4A:8-2.1 Types of layoff rights

(a) A lateral title right means the right of a permanent employee to [displace the least senior employee at a selected job location] **exercise displacement rights as set forth in N.J.A.C. 4A:8-2.2 against**

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an employee in the layoff unit holding a title determined to be the same or comparable to the affected title of the employee. For a probationary employee, a lateral title right means the right to fill a vacant position or displace a provisional or probationary employee in the same title. Title comparability shall be determined by the Department of Personnel based on the following criteria:

1. The title(s) shall have substantially similar duties and responsibilities and, in State service, the same class code;

2. The education and experience requirements for the title(s) are the same or similar and the mandatory requirements shall not exceed those of the affected title;

3. There shall be no special skills, licenses, certification or registration requirements which are not also mandatory for the affected title; and

4. Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.

(b) A demotional title right means the right of a permanent employee to [displace the least senior employee at a selected job location] **exercise displacement rights as set forth in N.J.A.C. 4A:8-2.2 against an employee** in the layoff unit holding a title determined to be lower than but related to the affected title of the employee. Demotional title rights shall be determined by the Department of Personnel based on the following criteria:

1. The title(s) shall have lower but substantially similar duties and responsibilities and, in State service, where applicable, a lower class code;

2. The education and experience requirements for the title(s) shall be similar and the mandatory requirements shall not exceed those of the affected title;

3. Special skills, licenses, certification or registration requirements shall be similar and not exceed those which are mandatory for the affected title; and

4. Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.

(c) A special reemployment right means the right of a permanent employee, based on his or her permanent title at the time of the layoff action, to be certified for reappointment after the layoff action to the same, lateral and lower related titles. Special reemployment rights shall be determined by the Department of Personnel in the same manner as lateral and demotional rights.

1. A special reemployment list from one governmental jurisdiction shall not be certified to another jurisdiction.

i. In local service, for purposes of this chapter, an autonomous agency shall be considered a separate jurisdiction. An autonomous agency is one which, by statute, is a body corporate and has the powers of an appointing authority.

ii. In State service, the entire State government constitutes a single jurisdiction.

(d) Employees serving in a specialized credential variant title shall have title rights based upon the special credentialing. Specialized credentialing shall be based upon at least one of the following, upon approval by the Department of Personnel:

1. Licensure or certification;

2. Specialized education;

3. Specialized client-based or program experience; or

4. Service as a trainee in a specialized area of operation leading to advancement to a primary title with specialized credentialing.

[(d)]**(e)** Affected negotiations representatives shall be permitted to be present at any meeting with individual employees where layoff rights are discussed.

[(e)]**(f)** See N.J.A.C. 4A:8-2.2 for the exercise of lateral and demotional title rights, and see N.J.A.C. 4A:8-2.3 for the exercise of special reemployment rights.

4A:8-2.2 Exercise of lateral and demotional rights

(a) In State service, a permanent employee in a position affected by a layoff action shall be provided **applicable lateral and demotional** title rights **first at the employee's option within the municipality in which the facility or office is located, and then** to the job locations selected by the employee within the department or autonomous authority. The employee shall select individual job locations in preferential order from the list of all job locations. (see N.J.A.C. 4A:8-1.5(c)) and indicate:

1. Job locations at which he or she will accept lateral title rights; and

2. Job locations at which he or she will accept demotional title rights, including any restrictions based on salary range or class code.

(b) In local service, a permanent employee in a position affected by a layoff action shall be provided title rights within the layoff unit.

(c) Following the employee's selection of job location preferences, lateral and demotional title rights shall be provided in the following order:

1. A vacant position that the appointing authority has previously indicated it is willing to fill;

2. A position held by a provisional employee who does not have permanent status in another title. Where there are multiple provisional employees at a job location, the specific position shall be determined by the appointing authority;

3. A position held by a provisional employee who has permanent status in another title. Where there are multiple provisionals at a job location, the specific position shall be determined based on the level of the permanent title held and seniority in title;

4. The position held by the employee serving in a working test period with the least probationary time;

5. In State service, and in local jurisdictions having a performance evaluation program approved by the Department of Personnel, the position held by the permanent employee whose most recent (within the last 12 months) performance rating in his or her permanent title was [an unsatisfactory] **Significantly Below Standards** or equivalent rating;

6. In State service, and in local jurisdictions having a performance evaluation program approved by the Department of Personnel, the position held by the permanent employee whose most recent (within the last 12 months) performance rating in his or her permanent title was Marginally Below Standards or equivalent rating;

[6.]**7.** The position held by the permanent employee with the least seniority (see N.J.A.C. 4A:8-2.4(a)).

(d) Employees serving in their working test periods shall be provided lateral title rights in the same order as (c)1 through 4 above.

[(e) In State service, and in local jurisdictions having a performance evaluation program approved by the Department of Personnel, employees whose most recent (within the last 12 months) performance rating in their permanent title was an unsatisfactory or equivalent rating shall have lateral title rights only against vacant positions to be filled or against employees without permanent status.]

(e) When an employee in a professional title is granted demotional title rights to a para-professional or non-professional title, or when an employee in a para-professional title is granted demotional title rights to a non-professional title, displacement may be made only on the basis of greater permanent continuous service. See N.J.A.C. 4A:4-2.5 for definitions of professional, para-professional and non-professional titles.

(f) Demotional rights may extend beyond the employee's demotional title rights to include any title previously held on a permanent basis **no more than 10 years prior to the effective date of the layoff** within current continuous service. [In such cases, displacement] **Displacement** may be made only on the basis of greater permanent continuous service **except when a provisional or probationary employee is serving in the previously held title. In such cases, the provisional or probationary employee shall be subject to displacement.**

1. Such extended rights shall not be granted when the employee has either lateral title rights options, or demotional title rights options to a title with a higher class code than the previously held title, within the selected job locations.

[(g) In State service, employees in intermittent titles shall have lateral and demotional rights only to intermittent titles.]

(g) Employees who are placed in trainee titles shall serve a complete training period if the trainee title is outside of either the specialized or generalized title series from which they were laid off.

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4A:8-2.3 Exercise of special reemployment rights

(a) A permanent employee shall be granted special reemployment rights based on the permanent title from which he or she has been laid off, demoted or displaced by job location. In addition, the employee shall be entitled to special reemployment rights to his or her previously held lateral or demotional title (see N.J.A.C. 4A:8-2.2(f)). These rights are subject to the following limitations:

1. In State service, an employee who is displaced from the municipality in which his or her facility or office was located shall, at the employee's option, be granted special reemployment rights to that municipality in addition to job locations selected by the employee.

[1.]**2.** An employee who is displaced by job location in a layoff action, but remains in his or her permanent title, or is reappointed to his or her permanent title from a special reemployment list, shall have special reemployment rights only to his or her original job location at the time of layoff. In cases where **no facility or office remains in** the original job location [no longer exists], the employee shall be provided the choice of another job location. As permitted by the Department of Personnel for other good cause, and upon written request by the employee with notice to the appointing authority, the employee may substitute another job location for the original job location.

[2.]**3.** An employee who exercises a lateral title right or who is reappointed to a lateral title from a special reemployment list shall retain special reemployment rights only to his or her original permanent title and job location at the time of the layoff. In cases where **no facility or office remains in** the original job location [no longer exists], the employee shall be provided the choice of another job location. As permitted by the Department of Personnel for other good cause, and upon written request by the employee with notice to the appointing authority, the employee may substitute another job location for the original job location.

(b) Priority of special reemployment lists shall be determined as follows:

1. Special reemployment lists shall take priority over all other reemployment lists, open competitive lists and lateral title changes pending examination (see N.J.A.C. 4A:4-7.6(c)), except those resulting from position reclassifications, for the entire jurisdiction (see N.J.A.C. 4A:8-2.1(c)1). Special reemployment lists shall also take priority over promotional lists for the State department, autonomous agency or local department where the layoff occurred.

2. Special reemployment lists shall also take priority over transfers and all lateral title changes except those resulting from position reclassifications within a layoff unit.

(c) A special reemployment list shall not have an expiration date. Ranking on the list shall be based on the employee's permanent title and seniority at the time of layoff. Appointments from the list shall be made in the order certified. Removal of names from a special reemployment list may be made in accordance with applicable rules (see N.J.A.C. 4A:4-4.7 and 4A:4-6). Following appointment from a special reemployment list, an employee's name shall be removed from the special reemployment list for any title with a lower class code (State service) or lower level (local service).

(d) Employees who resign or retire in lieu of lateral displacement, demotion or layoff, or who subsequently resign or retire, will not be placed or remain on a special reemployment list (see N.J.A.C. 4A:4-3.1(a)3).

[(e) In State service, employees in intermittent titles shall have special reemployment rights only to intermittent titles and only within the department or autonomous authority in which the layoff occurred.]

(e) In State service, employees who decline reemployment to a job location will be removed from future certifications to that location for that title and all lateral or lower titles. Employees who decline reemployment to their original or substituted job location (other than the original municipality) will be certified only to the original municipality for that title and all lateral or lower titles. Employees who decline reemployment to their original municipality shall be removed from the special reemployment list for that title and all lateral or lower titles. However, employees who are unavailable for work when offered reemployment due to temporary disability or other good cause shall remain on the special reemployment list.

4A:8-2.4 Seniority

(a) Seniority for purposes of this chapter is the amount of continuous permanent service in [an employee's current permanent title and other titles that have (or would have had) lateral or demotional rights to the current permanent title] **the jurisdiction, regardless of title.** Seniority shall be based on total calendar years, months and days in [title] **continuous permanent service** regardless of work week, work year or part-time status[; however, seniority for State employees in intermittent titles shall be calculated on the basis of hours in regular pay status].

1. A resignation/new appointment pursuant to N.J.A.C. 4A:4-7.9 shall not be considered a break in continuous service.

2. In State service, seniority shall include credit for performance evaluations as set forth in (b) below.

(b) Credit shall be granted for the final Performance Assessment Review (PAR) rating on file in the candidate's personnel office as of the date of service of the layoff notice.

1. Credit shall be awarded as follows:

i. Three years for Significantly Above Standards;

ii. Two years for Exceeds Standards; or

iii. One year for Meets Standards.

2. When there is no final rating on file for an employee as of the date of service of the layoff notice, the rating for that period shall be deemed Meets Standards and credit shall be given for that rating.

[(b)]**(c)** Preferred seniority[, which means greater seniority than anyone currently serving in a demotional title,] shall be provided as follows:

1. Employees with permanent status who exercise their demotional rights in a layoff action[, other than to a previously held title pursuant to N.J.A.C. 4A:8-2.2(f), will have preferred seniority] **shall carry forward their credit for performance evaluations for purposes of calculating seniority in a subsequent layoff action.**

2. Employees reappointed from a special reemployment list to a lower title in the same layoff unit from which they were laid off or demoted [will have preferred seniority. Records of preferred seniority shall be maintained by the appointing authority in a manner acceptable to the Department of Personnel] **shall carry forward their credit for performance evaluations for purposes of calculating seniority in a subsequent layoff action.**

[3. If more than one employee has preferred seniority, priority will be determined on the basis of the class code in State service, or the class level in local service, of the permanent title from which each employee was laid off or demoted and the seniority held in the higher title.]

EXAMPLE: At the time of her demotion, an employee has five years' permanent service, plus three years' credit for a Significantly Above Standards rating, for a total of eight years' seniority credit. She receives a rating of Significantly Above Standards in her new demotional title. One year later, her title is affected by another layoff action. She now has six years' permanent service, plus three years' credit for her current Significantly Above Standards rating, plus three years' credit for her previous Significantly Above Standards rating, for a total of 12 years' seniority credit.

[(c) The following types of leaves shall not be deducted from seniority calculations: all leaves with pay including sick leave injury (SLI); military, educational, gubernatorial appointment, personal sick, disability, family and voluntary alternative to layoff leave without pay; and, in local service, leave to fill elective public office. Suspensions, other leaves of absence without pay and any period an employee is laid off shall be deducted in calculating seniority.]

(d) The following shall not be deducted from seniority calculations:

1. Voluntary furloughs;

2. All leaves with pay including sick leave injury (SLI);

3. Leaves without pay for the following purposes: military, educational, gubernatorial appointment, unclassified appointment, personal sick, disability, family and voluntary alternative to layoff;

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4. In State service, employment in the Senior Executive Service, provided the employee had permanent service prior to the SES appointment; and

5. In local service, leave to fill elective public office.

(e) Suspensions, other leaves of absence without pay and any period an employee is laid off shall be deducted in calculating seniority.

[(d)]**(f)** Employees reappointed from a special reemployment list shall be considered as having continuous service for seniority purposes; however, the elapsed time between the layoff or demotion in lieu of layoff and reappointment shall be deducted from the employee's seniority.

[(e) An employee appointed to a previously held title pursuant to N.J.A.C. 4A:8-2.2(f) shall have all permanent continuous service in that title aggregated for seniority purposes.]

[(f)]**(g)** Employees serving in their working test period shall be granted seniority based on the length of service following regular appointment. Permanent employees serving in a working test period in another title shall also continue to accrue seniority in their permanent titles. Permanent employees serving in a provisional, temporary or interim appointment shall continue to accrue seniority in their permanent titles.

[(g)]**(h)** If two or more employees have equal seniority, the tie shall be broken in the following order of priority:

1. A disabled veteran shall have priority over a veteran. A veteran shall have priority over a non-veteran (see N.J.A.C. 4A:5-1);

[2. The employee with the higher performance rating shall have priority over an employee with a lower rating, provided that all tied employees were rated by the same supervisor. In local service, the performance rating system, must have been approved by the Department of Personnel;]

2. The employee with the greater amount of continuous permanent service in the employee's current permanent title and other titles that have (or would have had) lateral or demotional rights to the current permanent title, shall have priority;

3. The employee with the greater seniority in the title before a break in service shall have priority;

[4. The employee with greater continuous permanent service, regardless of title, shall have priority;]

[5.]**4.** The employee with greater non-continuous permanent service, regardless of title, shall have priority;

[6.]**5.** The employee who ranked higher on the same eligible list for the title shall have priority;

[7.]**6.** The employee with greater continuous service as a provisional, temporary or interim appointee in the subject title shall have priority;

[8.]**7.** The employee with greater total service, regardless of title or status, shall have priority;

8. The employee with the higher performance rating during the 12 month period prior to the effective date of the layoff shall have priority over an employee with a lower rating. In local service, the performance rating system must have been approved by the Department of Personnel;

9. The employee with the higher performance rating during the period between 24 months and 12 months prior to the effective date of the layoff shall have priority over an employee with a lower rating. In local service, the performance rating system must have been approved by the Department of Personnel;

[9.]**10.** Other factors as may be determined by the Commissioner.

4A:8-2.5 Reassignments

(a) For a period of 12 months after the service of the layoff notice required by N.J.A.C. 4A:8-1.6(a), no permanent or probationary employee in the layoff unit in a title actually affected by layoff procedures shall be [reassigned] **subject to the following types of involuntary reassignments**, except as permitted by the Commissioner for good cause:

1. Reassignment to a different shift, unless the reassignment is based on a seniority program;

2. In State service, if employed in the original municipality, reassignment to a different municipality; and

3. In State service, if not employed in the original municipality, reassignment to a different job location.

(b) During the period described in (a) above, notice of the types of voluntary reassignments listed in (a) above shall be provided to affected negotiations representatives, and appointing authorities should consult with such representatives upon request.

4A:8-2.6 Appeals

(a) Permanent employees and employees in their working test period may file the following types of appeals:

1. Good faith appeals, based on a claim that the appointing authority laid off or demoted the employee in lieu of layoff for reasons other than economy, efficiency or other related reasons. Such appeals shall be subject to hearing and final administrative determination by the Merit System Board (see N.J.A.C. 4A:2-2.9 et seq.); and/or

2. Determination of rights appeals, based on a claim that an employee's layoff rights or seniority were determined and/or applied incorrectly. Such appeals shall be subject to a review of the written record by the Department of Personnel, with a right to further appeal to the Commissioner (see N.J.A.C. 4A:2-1.1(d)).

(b) Good faith and determination of rights appeals shall be filed within 20 days of receipt of the final notice of status required by N.J.A.C. 4A:8-1.6(f). Appeals must specify what determination is being appealed, the reason(s) for the appeal, and the relief requested.

(c) The burden of proof is on the appellant.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Notice of Administrative Correction
Public Hearing Date
Uniform Construction Code
Barrier Free Subcode

Proposed Amendment: N.J.A.C. 5:23-3.14
Proposed New Rule: N.J.A.C. 5:23-7.1
Proposed Repeals: N.J.A.C. 5:23-7.1 through 7.99
Proposed Recodification with Amendments: N.J.A.C. 5:23-7.100 through 7.116 as N.J.A.C. 5:23-7.2 through 7.18

Take notice that the hearing date of "Friday, September 6, 1994" specified in the above referenced notice of proposal, published in the July 5, 1994 New Jersey Register at 26 N.J.R. 2698(a) was a typographic error. The **correct hearing date** is:

Friday, September 16, 1994 at 10:00 A.M.
Offices of the Construction Code Element
3131 Princeton Pike
Lawrenceville, New Jersey

EDUCATION

(b)

STATE BOARD OF EDUCATION

State-Operated School Districts

Proposed Readoption with Amendments: N.J.A.C. 6:7

Authorized By: State Board of Education, Leo Klagholz, Secretary, State Board of Education and Commissioner, Department of Education.

Authority: N.J.S.A. 18A:1-1, 18A:4-15 and 18A:7-45.

Proposal Number: PRN 1994-489.

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Submit written comments by October 6, 1994 to:
Elease E. Greene-Smith
Administrative Practice Officer
New Jersey Department of Education
225 East State Street, CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 6:7, State-Operated School Districts, will expire on January 2, 1995 unless readopted. The provisions of this chapter implement N.J.S.A. 18A:7A-45 which sets forth the criteria for the evaluation of building principals in State-operated school districts. These rules became effective January 2, 1990. The Department of Education has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated and is, therefore, proposing them for readoption at this time.

The readoption of these rules ensures that effective leadership will continue to be provided at every building level so that pupils will receive the thorough and efficient education to which they are entitled. This readoption is necessary to assure the establishment of standard criteria to measure a principal's performance in school building management.

A review of the proposed readoption follows:

Subchapter 1. Procedure for Evaluation of Building Principals in State-operated School Districts

N.J.A.C. 6:7-1.1 defines the term inefficiency and how it will be used relative to State-operated school districts. No changes are being proposed at this time to this section.

N.J.A.C. 6:7-1.2 sets forth the procedures to be followed when evaluating building principals in State-operated school districts. This section requires the State district superintendent, upon appointment, to establish an assessment unit to conduct on-site evaluations of each building principal in the State-operated school district. A minimum of three evaluations are required for each building principal, within six months following the reorganization of the State-operated school district. N.J.A.C. 6:7-1.2 further requires the assessment unit to provide the State district superintendent and the building principal with a written evaluation report. The Department is proposing that N.J.A.C. 6:7-1.2(a) be amended to require that the State district superintendent establish the assessment team within 30 days of appointment. The pressing tasks of newly designated State-operated superintendents have meant a delay in the immediate establishment of assessment teams. Specifying a time frame of 30 days will ensure the start of the assessment process. No additional changes are being proposed to this section.

N.J.A.C. 6:7-1.3 defines the manner in which tenured building principals in State-operated school districts are to be evaluated, provided written notification and timelines relative to a charge of inefficiency and findings of probable cause. No changes are being proposed at this time to this section.

Subchapter 2. Criteria for Evaluation of Building Principals in State-operated School Districts

N.J.A.C. 6:7-2.1 defines terms such as "assessment of pupil progress," "curriculum/program," "staff development" and other terms necessary for providing guidance to State Superintendents in managing State-operated school districts. No changes are being proposed at this time to this section.

N.J.A.C. 6:7-2.2 sets forth the criteria to be used for evaluating building principals in State-operated school districts. It is proposed that N.J.A.C. 6:7-2.2(a)6 be amended to make the use of the phrase "consistent and effective" consistent throughout the chapter. No additional changes are being proposed to this section.

Social Impact

The readoption of N.J.A.C. 6:7 is expected to have a positive social impact upon the students, parents, teachers and the local community in State-operated school districts. These rules will continue to provide a reasonable and fair method to evaluate principals. This will enable principals to maximize their skills and increase learning opportunities for students. As a result, the community will benefit by a student population with increased knowledge and self-esteem provided by a positive learning environment consistent with the effective schools research which indicates that the principal is a key reason for success or failure of a school. The readoption of N.J.A.C. 6:7 will help to ensure effective leadership at the building level. Uniform standards will provide principals with a clear understanding of their role and responsibility.

The proposed amendment specifies a time frame of 30 days for the establishment of the assessment team. This amendment will ensure that the State district superintendent takes action quickly to begin the process.

The rules in this chapter will ensure that the standards for principal evaluation will be fairly administered in accordance with N.J.S.A. 18A:6-11 and N.J.A.C. 6:24-5.1.

Economic Impact

The economic impact of the readoption of these rules is extremely varied and not easily quantified. Cost variables include the numbers of principals to be assessed, the number and size of the schools (in cases where one principal is responsible for two buildings), the scope of training of the assessment team and the number of team members, whether training is conducted by outside consultants and the number of evaluations conducted.

For example, based on a district with six assessors and 35 principals with four evaluations each, costs are estimated at $123,500 and include:

- Development of assessment instrument $7,000
- Training of assessment team $6,500
- Onsite evaluations by outside consultants and follow-up $110,000

It should be noted that the above cost is a one time only expenditure in a State-operated district.

The proposed amendments would have no new economic impact, since costs for principal assessment would be the same regardless of when the assessment team is established.

Regulatory Flexibility Statement

The rules proposed for readoption, N.J.A.C. 6:7 have no reporting, recording or compliance requirements for small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The requirements of the rules proposed for readoption impact solely upon the Department of Education and building principals in State-operated school districts.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:7.

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

6:7-1.2 Procedure for evaluation

(a) [Upon] **Within 30 days of** appointment, the State district superintendent shall establish an assessment unit which shall conduct on-site evaluations of each building principal in the State-operated school district.

(b) (No change.)

(c) Upon completion of each evaluation, the assessment unit shall provide a written evaluation report [for] **to** the State district superintendent and the building principal.

6:7-2.2 Criteria for evaluation of building principals in State-operated school districts

(a) An evaluation shall include, but not be limited to, an examination of the principal's performance based on the following criteria within the identified areas of school building leadership/management established pursuant to N.J.S.A. 18A:7A-45a:

1.-5. (No change.)

6. School Climate: The principal exhibits [effective and] consistent **and effective** leadership in creating a positive learning environment.

(b) (No change.)

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ENVIRONMENTAL PROTECTION

(a)

OFFICE OF LOCAL ENVIRONMENTAL MANAGEMENT

Notice of Pre-Proposal
County Environmental Health Act Rules
Pre-proposed Repeal and New Rules: N.J.A.C. 7:1H

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection
Authority: N.J.S.A. 26:3A2-28.
DEP Docket Number: 39-94-08/121.
Pre-proposal Number: PPR 1994-3.

Public workshops concerning this pre-proposal will be held on:

Tuesday, October 11, 1994
10:00 A.M. to 1:00 P.M.
Rutgers University
Cook College Student Center, Room C
New Brunswick, New Jersey

Wednesday, October 12, 1994
10:00 A.M. to 1:00 P.M.
Richard Stockton State College
Townsend Life Center
Multipurpose Room
Pamona, New Jersey

Tuesday, October 18, 1994
1:00 P.M. to 4:00 P.M.
First Floor Hearing Room
Department of Environmental Protection
401 East State Street
Trenton, New Jersey

Submit written comments, identified by the DEP Docket Number given above, by October 25, 1994 to:

Janis E. Hoagland, Esq.
Office of Legal Affairs
Department of Environmental Protection
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

The agency pre-proposal follows:

Under the County Environmental Health Act, N.J.S.A. 26:3A2-21 through 35 (CEHA), county health departments and other local agencies provide environmental health services throughout New Jersey. Local agencies provide these services under a delegation of authority from the Department of Environmental Protection (Department).

CEHA directs the Department to promulgate performance standards and administrative standards to govern this local administration of environmental health services. In 1980, the Department promulgated rules containing those standards. N.J.A.C. 7:1H. The Department made minor amendments to those rules in 1983, and has not amended them since.

As it was enacted originally, CEHA authorized the Department to delegate authority for environmental health services in the areas of air pollution, solid waste, noise, and water pollution. Amendments to CEHA enacted in 1991 authorized the Department to delegate authority for environmental health services in additional areas, including hazardous waste, pesticides, radiation, the protection of workers and the public from hazardous substances and toxic catastrophes, and other areas specified by the Commissioner of the Department. These statutory amendments made it necessary for the Department to amend the rules implementing CEHA, to establish performance standards for the additional areas of environmental health services.

To begin developing the necessary amendments to the rules, the Department solicited comments from interested members of the public (23 N.J.R. 2237(a), August 5, 1991). The following persons submitted written comments:

Louis Anello, New Jersey Environmental Health Association
Robert Bruch, New Jersey Department of Agriculture
Daniel Caramagno, Schering Laboratories
Wayne DeFeo, National Solid Wastes Management Association
Robert Ferraiuolo, Hudson Regional Health Commission
Charles Kauffman, Ocean County Health Department
Pat Pignatelli, Morris County Health Officers Association, and Professional Health Officers Society of New Jersey
Donald Schneider, Gloucester County Health Department
Walter Trommelen, Board of Chosen Freeholders of Burlington County, and Burlington County Health Department
Frank Wilpert, Sussex County

Based on the comments submitted, and its own review of the existing rules, the Department determined that substantial amendments to the rules are needed. In addition to the new performance standards, rule amendments are needed to bring consistency and predictability to the Department's delegations of authority, awarding of grants and review of environmental health ordinances. Furthermore, the Department determined that the performance standards and standards of administrative procedure in the existing rules need to be rewritten substantially in order to provide better guidance to local agencies and to improve coordination of efforts among local agencies and between local agencies and the Department.

Accordingly, the Department will be proposing to repeal the existing rules at N.J.A.C. 7:1H and to replace them with new rules. The purpose of this pre-proposal is to make a draft of these new rules available to interested members of the public for review and discussion with the Department. This stage of the development of the new rules is when the Department has the most flexibility to make changes in response to public comments; accordingly, specific suggestions to improve the new rules, clarify any confusion or ambiguity, or address additional issues would be especially helpful at this stage of rule development.

A summary of the major issues presented in the pre-proposed new rules follows:

I. Delegation of Authority

A. Background

CEHA authorizes the Commissioner of the Department to "delegate the administration of one or more aspects of the environmental health laws of this State or of the rules adopted thereto" to a "certified local health agency." N.J.S.A. 26:3A2-28(b). The delegation remains valid only as long as the Commissioner determines that the certified local health agency has the capability and determination to adhere to the performance standards and standards of administrative procedure.

CEHA requires the Commissioner to consider several factors in determining whether to delegate authority to administer all or part of an environmental health program. Those factors include (i) the consistency of the delegation with applicable federal or State law; (ii) the probable effects of the delegation on the effectiveness and efficiency of program administration, and the need for uniform program administration; and (iii) the availability of technical expertise, adequate staff levels and other resources needed to adequately perform program administration.

In the past, the Department delegated authority under CEHA in two steps. First, the Department would certify a county health department or other local agency as being eligible for delegation. Second, the Department would delegate authority to the certified local health agency by entering into a series of interagency agreements; the agreements outlined the requirements to be satisfied by the certified local health agency in exercising its delegated authority in each program area.

B. New approach to delegation

The Department and the certified local health agencies identified several problems with the previous approach to delegation. One major problem was a lack of certainty about what authority had been delegated; for example, when local agencies attempted to enforce environmental laws, courts often questioned whether the agencies had authority to do so. Another problem is that developing separate interagency agreements for each agency and each program created an unnecessary administrative burden and a volume of duplicative paperwork.

Accordingly, the pre-proposed new rules take a different approach to delegation. This approach makes clear the scope of the authority being delegated to the local agency, and eliminates the need for interagency agreements.

The delegation of authority to the local agency will be set forth in the certification. The certification will list all programs or portions of programs that the local agency is authorized to administer. The certification will also outline the types of enforcement actions that the local agency is authorized to undertake. The Department expects that includ-

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ing this information in a single document will avoid confusion by courts and by the regulated community regarding the scope and extent of the local agency's authority.

Interagency agreements will no longer be necessary under the pre-proposed new rules. The interagency agreements had contained requirements for each local agency's administration of each delegated program; however, the bulk of the requirements for a given program can be applied equally to all local agencies administering that program. The administrative burden on the local agencies and the Department to include those requirements in individualized interagency agreements is not offset by any benefit. Accordingly, the Department has included those uniform requirements in the performance standards in the pre-proposed new rules, so that it is not necessary to set them forth separately in each interagency agreement with each local agency.

The Department recognizes that the interagency agreements executed in the past contained some provisions tailored to the particular local agency involved. These types of county-specific provisions cannot be set forth in a rule applicable to all counties; instead, they will be included in the certification, which is based on the work program submitted by each local health agency.

The Department will be seeking revised work programs from the certified local health agencies. The review of the revised work programs will enable the Department to confirm that each certified local health agency is continuing to meet the revised performance standards; it will also make it possible to issue new certifications in accordance with the new rules, and eliminate the interagency agreements as discussed above.

C. Becoming a certified local health agency

CEHA establishes a procedure for a county department of health or municipal or regional health agency to become a "certified local health agency" eligible for delegation under CEHA. N.J.S.A. 26:3A2-28 and 33. A county department of health applies for certification by submitting to the Department a work program for meeting the performance standards and standards of administrative procedure. A municipal or regional health agency that was providing environmental health services meeting the performance and administrative standards when CEHA first took effect, and is willing to implement the county health department's work program within its own jurisdiction, can petition the Department for certification.

As noted above, a county health department seeking certification must submit a work program to the Department. CEHA briefly outlines the required contents of the work program; the existing rules do little more than repeat that brief outline. Accordingly, the pre-proposed new rules explain those statutory requirements in detail, for the purpose of assisting the county health departments in preparing the work program.

One statutory requirement that the rule explains in more detail is the requirement that the work program include a delineation of responsibilities for program implementation within the county. This requirement is especially important in counties where municipal health agencies do much of the work to implement the county's environmental health program. In that circumstance, the pre-proposed new rule would require the county health department to identify all such municipal agencies in the work program, and attach copies of the agreements between the county health department and each municipal agency. This information will assist in evaluating the combined capabilities of the county health department and the municipal agencies to administer the environmental health program; it will also help to establish that the municipal agencies will be continuing to provide assistance to the county health department in the future.

The existing rules also require certified local health agencies to submit revised work programs to the Department by September 1 of each year. One certified local health agency has previously commented that it would reduce paperwork if the work program and the proposed scope of work for the grant agreement (discussed below) could be combined into one document. The Department agrees that the information previously sought in the annual updates of the work programs can be provided more efficiently in the grant application. Accordingly, the pre-proposed new rules do not require an annual update of the work program.

Though annual updates will not be required, the Department does expect to ask the certified local health agencies to submit revised work programs that will meet the requirements of the new rules. The Department expects to be able to issue new certifications to those agencies based on the revised work programs, and to phase out the interagency agreements.

D. Core programs; mandatory vs. elective activities

One certified local health agency had suggested distinguishing between "core" objectives of the delegation, which are mandatory, and "elective" objectives, which are optional and may be conducted to the extent of available resources. The Department has included this distinction in the pre-proposed new rules, and seeks public comment and suggestions about which objectives should be mandatory and which should be elective.

The rules distinguish between mandatory and elective objectives in two ways. First, "core programs" are distinguished from other programs. Second, within each program, "core activities" are distinguished from other activities.

1. Core programs

The core programs are:

- Solid waste;
- Air pollution;
- Water pollution;
- Noise; and
- Site remediation.

The pre-proposed new rules contemplate that every certified local health agency will be administering at least the core programs. The work program must include a time schedule for obtaining delegation of authority for all of the programs (referred to in the pre-proposed rule as "full program implementation"). Failure to begin administering the core programs within that specified time is grounds for revoking the certification.

2. Mandatory vs. elective activities

Delegation of any given program requires the certified local health agency to undertake certain duties that are central to the delegation. In addition to those duties, the certified local health agency may also elect to take on additional responsibilities. For example, a certified local health agency administering a solid waste program will be required to inspect all compost facilities within its geographic jurisdiction. However, the agency is not required to inspect transfer stations and materials recovery facilities, but may elect to do so.

E. Enforcement coordination

Several certified local health agencies have sought guidance from the Department regarding enforcement of environmental health laws. The pre-proposed new rules include guidance on enforcement. Enforcement actions are not limited to efforts to assess or collect penalties for violations; enforcement actions also include efforts to inform members of the regulated community that a violation exists, and working to have the violation corrected.

The enforcement guidance in the pre-proposed new rules includes general principles for coordinating the efforts of the certified local health agency with those of the Department and outlining the scope of the local agencies' enforcement authority. In addition, the pre-proposed new rules include specific guidance about topics such as gaining entry to a facility, documenting an inspection or investigation, preparing a notice of violation, and assessing penalties.

Historically, some of the certified local health agencies have concentrated their efforts on inspections and investigations; when those efforts revealed violations of environmental health laws, the violations were most often referred to the Department for formal enforcement action. Since CEHA was amended in 1991, more of these enforcement actions have been handled by the local agencies. Through the pre-proposed new rules, the Department intends to encourage and assist the local agencies in handling the bulk of these enforcement actions.

1. Coordination of efforts with Department

When the Department first sought public comment on revamping the CEHA rules, one industrial commenter noted that while delegating basic administration and enforcement to the county and municipal level may appear to ease demands on the Department's resources, careful planning was necessary to avoid redundant administrative tasks and inappropriate enforcement activities. The Department agrees. For this reason, one primary goal of the pre-proposed rules is to establish a means for the Department and the certified local health agencies to coordinate their enforcement efforts, and delineate their respective responsibilities. Duplicative inspections and investigations by the Department and local agencies add to the regulated community's burden without providing a corresponding benefit to environmental protection. In addition,

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duplicative work wastes the scarce resources that the Department and the local agencies have available. The pre-proposed new rules at N.J.A.C. 7:1H-4.3(a) are intended to minimize that duplication.

Coordination is also needed to avoid conflicts between the efforts of the Department and the local agencies. For example, if the Department is preparing or undertaking a particular enforcement action regarding a violation, that work can be hindered if the local agency commences its own enforcement action for the same violation. The pre-proposed new rules at N.J.A.C. 7:1H-4.3(b) are intended to avoid such conflicts, by providing for the Department to inform certified local health agency of major enforcement actions; the local agency will assist the Department in those actions and forestall its own enforcement action.

2. Scope of enforcement authority

In outlining the scope of the certified local health agency's enforcement authority, enforcement actions will fall into three categories: (i) those that the certified local health agency may undertake itself, without first consulting the Department; (ii) those that the certified local health agency may undertake itself after consulting the Department and obtaining prior approval; and (iii) those that the certified local health agency may not undertake and are reserved solely for the Department. This approach will tailor the scope of a certified local health agency's enforcement authority to the enforcement capabilities it demonstrates in the work program.

The certification will list the enforcement actions that a certified local health agency can handle without involving the Department, and the actions that the certified local health agency must refer to the Department and cannot undertake itself. Therefore, the certified local health agency must first obtain the Department's approval before commencing any type of enforcement action not listed in the certification.

3. Right of entry

The pre-proposed new rules at N.J.A.C. 7:1H-4.11 outline the certified local health agency's right to enter a site. Essentially, when the Department delegates authority to administer a program under an environmental health law, it also delegates its right of entry under the law. The certified local health agency will therefore have the same right of entry that the Department has under the law that the local agency is implementing.

4. Documentation of inspections and investigations

When the certified local health agency conducts an inspection or investigation, it must document its findings. The Department provides forms to be used for inspection or investigation reports, and training to assist local agency staff in collecting the information to be included in the reports. The pre-proposed new rules at N.J.A.C. 7:1H-4.7 supplement these forms and training by setting forth the information that must be collected and documented.

5. Notices of violation

When the certified local health agency determines that a violation of an environmental health law has occurred, the agency may issue a notice of violation to the person responsible for the violation. N.J.A.C. 7:1H-4.10 lists the information that must be included in the notice of violation.

6. Penalties

The certified local health agencies have sought guidance in determining the appropriate amount of a penalty for a violation. Under the program-specific performance standards at N.J.A.C. 7:1H-5 through 19, the local agency should be using the penalty schedules in the Department's rules as guidance when they seek penalties in an enforcement action.

F. Pilot programs

The Department and the certified local health agency have previously recognized the need for pilot programs. Under a pilot program, one or more selected certified local health agencies receives a temporary and limited delegation of authority in a new program area. The experience gained in the delegation of a pilot program will assist the Department in developing performance standards for a full delegation of the program; alternatively, that experience may show that the pilot program is not appropriate for delegation.

Under N.J.A.C. 7:1H-19, a certified local health agency administering a pilot program will do so under close supervision by the Department. The local agency must provide the Department with prior notice of its inspections and investigations, and the Department may supervise the local agency's conduct of legal proceedings regarding a violation.

Grants will continue to be available for pilot programs, under the grant standards at N.J.A.C. 7:1H-20 discussed below.

G. Programs for which local agencies have independent authority

The Department recognizes that some environmental health laws grant authority to local agencies that is totally independent of CEHA. For example, under the Realty Improvement Sewerage and Facilities Act, N.J.S.A. 58:11-23 et seq., county and municipal boards of health have the authority to certify proposed water supply systems and sewerage facilities for proposed realty improvements; and as authorized by the Safe Drinking Water Act, N.J.S.A. 58:12A-9(g), the Department has delegated to local boards of health the authority to certify some new non-community water supply systems.

The Department seeks comments regarding whether a separate delegation of authority under CEHA, in addition to the delegations under these other laws, helps to serve the purposes of those laws. The Department recognizes that a separate delegation may lead to confusion about the nature of a local agency's authority, and may be duplicative. To the extent that commenters believe that a separate delegation of authority under CEHA is beneficial, the Department also seeks comments about how broad that delegation should be. For example, it may be most effective to delegate only enforcement responsibilities under CEHA.

II. Grants

A. Introduction

CEHA authorizes the Department to award grants to certified local health agencies. In the past, the Department has awarded grants without the benefit of written criteria or guidance. To make the grant award process more understandable and more predictable, the Department is pre-proposing new rules at N.J.A.C. 7:1H-20 that establish procedures for the grant process and criteria for making grant decisions.

Traditionally, the funds for CEHA grants have come from three types of sources. First, the Legislature has appropriated money for CEHA grants. Second, part of the penalties that the Department collects from enforcing laws governing air pollution, water pollution and solid waste have been made available for CEHA grants. The Department has been required to return part of these penalty receipts to the State's general fund, but receipts in excess of that amount have been targeted for CEHA grants. Third, other Department programs have at times provided funds for CEHA grants dedicated to funding work by the local agencies in those program areas.

B. Timing of grants

The nature of the funding for CEHA grants has created timing problems that have been frustrating to the local agencies. Specifically, the penalty receipts dedicated to CEHA grants do not become available until relatively late in the fiscal year (which ends June 30). As a result, the Department cannot commit to issue the full amount of the grants from those receipts before then.

However, the local agencies plan their grant-funded activities on a calendar year basis. Since the penalty receipts are not available until late in the fiscal year, the local agencies have had to begin performing their work at the beginning of the calendar year without a firm commitment that a certain amount of grant money will be forthcoming.

Furthermore, the Department expects that this problem will grow more difficult. Penalty receipts have been decreasing due to the Department's efforts to assist the regulated community in complying with environmental laws, and the efforts to make penalty assessments more rational and more legally sustainable. That decrease means that penalty receipts for CEHA grants will tend to become available still later in the year.

The local agencies have made it clear that the timing of the grants creates a serious problem. The Department has worked to address this problem in the pre-proposed new rules at N.J.A.C. 7:1H-20.

The rules will divide the grant awards into two steps. In the first step, at the beginning of the calendar year, the Department will disburse the money available at that time. In the second step, near the end of the fiscal year, the Department will disburse the additional money that becomes available after the first step.

The certified local health agency will submit a single grant application for both steps. Based on the grant application, the Department will issue a letter of intent setting forth the grant amounts for each step. Though

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the letter of intent does not legally bind the Department to make the grant (the Department could not issue such a binding letter of intent to disburse money that was not yet available), it should add certainty to the local agencies' spending plans in two ways: first, they would receive part of their grants before they began incurring the expenses to be funded by the grant; and second, they would have at least a conditional indication of the amount of additional money they could expect later in the year.

This two-step process depends upon grant funds becoming available to the Department in two steps. Though the Legislature has historically made an appropriation from the General Fund and also targeted part of the Department's penalty receipts for CEHA grants, the Department recognizes that these funds are not guaranteed to be available always. Accordingly, a two-step process may not always be necessary.

C. Change in base grants

In previous years, the Department had determined the amount of the base grant (which corresponds to the first step of the two-step grant process) by dividing the State appropriation equally among all eligible applicants. The Department no longer believes that this is the most effective way to divide the grant monies. Instead, under the pre-proposed new rules the amounts awarded in both steps of the grant process will be based upon the specific needs and proposed expenditures of each local agency.

D. Criteria for apportioning grants

As noted above, in the past the Department has awarded grants without the benefit of written criteria or guidance. The pre-proposed new rules will provide that guidance. N.J.A.C. 7:1H-20.6(b) sets forth detailed criteria that the Department will apply to select the undertakings that will be funded and the extent to which they will be funded.

E. Grant agreements

In the past, each certified local health agency has executed a grant agreement with the Department. That practice will continue, and the form and contents of the grant agreement will not drastically change. However, the contents of the grant agreement are now set forth in the pre-proposed new rules at N.J.A.C. 7:1H-20.7(b).

III. Environmental Quality and Enforcement Fund

CEHA requires each county and municipality with a certified local health agency to establish an "Environmental Quality and Enforcement Fund" (EQEF). N.J.S.A. 26:3A2-35. All fees, fines and penalties that the county or municipality collects under CEHA must be deposited into the EQEF, and dedicated to the use of the certified local health agency.

The Department recognizes that the certified local health agencies have experienced some difficulties with the EQEF. The Department has attempted to address those difficulties in the pre-proposed new rules at N.J.A.C. 7:1H-3.7, to the extent that the statute authorizes it to do so.

For example, a certified local health agency may have made contractual or other arrangements with another entity that takes enforcement actions delegated to the certified local health agency. The entity that collected penalties in these enforcement actions may have resisted depositing the penalty receipts in the EQEF. However, both the statute and the pre-proposed new rules mandate that these receipts must be deposited into the EQEF.

The county or municipality that creates the EQEF cannot draw upon it to fund activities apart from CEHA. Both the statute and the pre-proposed new rules require that EQEF monies must be dedicated to the use of the certified local health agency in carrying out its responsibilities under CEHA.

Under N.J.A.C. 7:1H-2.4(a)12 and 13, the failure to deposit fees, fines and penalties into the EQEF and the use of EQEF monies for activities other than those of the certified local health agency under CEHA may result in the suspension or revocation of the certification. If the certification is suspended or revoked, the delegation of authority to the certified local health agency would be withdrawn and it would be unable to collect fees, fines or penalties under CEHA.

The Department recognizes that certified local health agencies may have experienced other problems in the administration of the EQEF. The Department invites comments regarding these types of problems. The Department will explore regulatory solutions to such problems, to the extent that the statute authorizes it to do so.

The Department also recognizes that questions have arisen about the types of uses of EQEF monies that the statute allows. The Department invites commenters to raise these questions. However, the answers to many of these questions may involve case-by-case applications of the statute to very specific circumstances that could not be set forth usefully in the rule.

IV. Ordinances

A. Background

CEHA authorizes the adoption of environmental health ordinances. N.J.S.A. 26:3A2-27. Ordinances must be consistent with all applicable State and Federal statutes, rules and regulations and with water quality, air quality, solid waste and other management plans approved by the Department; however, the ordinance may be more stringent than these statutes, regulations or plans if they allow for the adoption of more stringent ordinances. Unless the ordinance is identical to a model ordinance developed by the Department, the ordinance must be submitted to the Commissioner for approval.

It is important to note that if an ordinance does nothing more than duplicate an already thorough State or Federal statute or regulation, it will not be considered consistent with the State or Federal regulation. If the ordinance is purely duplicative, it will add another layer of regulation without providing a corresponding benefit. For this reason, consistency is based on more than a comparison of the language of the ordinance with the language of the State and Federal statutes, regulations and plans.

The pre-proposed new rules at N.J.A.C. 7:1H-21 apply only to ordinances adopted pursuant to the authority of CEHA. Ordinances adopted under some other authority, such as municipal ordinances pursuant to N.J.S.A. Title 40 or air pollution control ordinances under N.J.S.A. 26:2C-22, are not governed by the pre-proposed new rules.

B. Timing of review

An ordinance requiring the Commissioner's approval must be submitted to the Department within five working days after it is adopted. If the Commissioner takes no action on the ordinance within 90 days after it was adopted, it takes effect automatically.

In the past, ordinances have frequently been submitted to the Department more than five working days after adoption. Though such late submissions do not comply with the statutory requirements, the Department does not believe that an ordinance should be disapproved solely because it was submitted late. However, the late submission should not reduce the time that the statute allots for the Commissioner's review of the ordinance. Accordingly, the pre-proposed new rules provide that if the ordinance is submitted late, the time for the Commissioner's review will begin to run five business days before the date of submission. This approach preserves the statutory time for review.

C. Fees

CEHA provides that a certified local health agency, if authorized by ordinance, may charge a reasonable fee for any service provided in connection with an environmental health ordinance. The fee may not exceed the estimated cost of providing the service.

The Attorney General's office has advised the Department that unlike the environmental health provisions of an ordinance, a certified local health agency's efforts to establish a fee in an ordnance are not subject to the Department's review. Accordingly, the Department will not evaluate the amount of a fee to determine whether it exceeds the estimated cost of providing the service that it funds.

Though the Department will not review these fees, nothing in CEHA or in the pre-proposed rule would preclude a person affected by a certified local health agency's fee from challenging it in a court of competent jurisdiction.

V. Audits

In the past, the Department has audited certified local health agencies to evaluate their performance under CEHA and their use of grant funds, fines, fees and penalties. To provide the local agencies with better notice of the nature of the audit, the Department has included a provision governing audits in the pre-proposed new rules at N.J.A.C. 7:1H-3.6. The audit includes a review of (i) the outputs produced by the local agency, (ii) the local agency's field activities, and (iii) the local agency's receipt and expenditure of grant funds and of fees, fines and penalties required to be deposited into the EQEF. The audit will also include a review of other agencies or entities that provide environmental health services under contract with the local agency.

The discussion above outlines the issues that the Department believes are central to the pre-proposed new rules. However, it is not intended to limit the scope of public comment on the pre-proposal. The Depart-

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ment invites comments on any provision of the pre-proposed new rules, and on any other issues related to CEHA that interested persons believe should be addressed in the new rules.

Full text of the pre-proposed new rules follows:

CHAPTER 1H
COUNTY ENVIRONMENTAL HEALTH ACT RULES

SUBCHAPTER 1. GENERAL PROVISIONS

7:1H-1.1 Scope

This chapter sets forth the rules of the Department implementing the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq., for the purposes set forth in N.J.A.C. 7:1H-1.3.

7:1H-1.2 Construction and severability

(a) These rules shall be liberally construed to enable the Department to effectuate the purposes of the Act.

(b) If any court or other tribunal determines that any provision of this chapter is invalid or unenforceable, such provision shall be deemed deleted from this chapter as though it had never been included herein, and the remaining provisions of this chapter shall remain in full force and effect.

7:1H-1.3 Purpose

(a) These rules are promulgated for the following purposes:

1. To establish procedures and standards under which local health agencies can become certified local health agencies;

2. To set forth standards for the administration of environmental health programs by certified local health agencies;

3. To establish environmental health performance standards for the implementation of environmental health programs by certified local health agencies;

4. To establish the standards and procedures under which the Department will delegate the administration of one or more aspects of the environmental health laws of the State or of the rules and regulations adopted thereto, pursuant to N.J.S.A. 26:3A2-28(b);

5. To establish procedures and standards for the making of grants to certified local health agencies pursuant to the Act; and

6. To establish procedures and criteria for the enactment of environmental health ordinances.

7:1H-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. Words and terms used in this chapter that are defined by cross-reference to other provisions of this title shall have the meanings set forth in the cross-referenced provisions, as those provisions are amended and supplemented.

"Act" means the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq., including any supplements or amendments thereto.

"Administrative standards" means the standards of administrative procedure set forth in N.J.A.C. 7:1H-3.

"Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property anywhere in the State as may be affected thereby, but excludes all aspects of employer-employee relationships with respect to health and safety standards within the confines of a place of employment.

"Applicant" means a certified local health agency applying for a grant under N.J.A.C. 7:1H-5.

"Appropriations act" means an act making appropriations for the support of the State government and the several public purposes for a given fiscal year, and regulating the disbursement of such appropriations.

"Approved public potable water supply" means a water supply that has been approved by the Department under N.J.S.A. 58:11-9.2 and N.J.A.C. 7:10-10.5.

"Calendar year" means the one-year period beginning January 1 and ending December 31.

"Capital expenditures" include expenditures for machinery, equipment, land, buildings, and raw materials used in connection with the performance of environmental health services.

"Certification" means the certification issued to a certified local health agency by the Department under N.J.A.C. 7:1H-2.2.

"Certified local health agency" means a local health agency that the department certifies has satisfied the administrative standards and all applicable performance standards, which certification has not been suspended, terminated or revoked.

"Commissioner" means the Commissioner of the Department of Environmental Protection.

"Cooperative Coastal Monitoring Program" or "CCMP" means a program conducted by the Department of Health, the Department and local health agencies to assess nearshore coastal water quality and investigate sources of water pollution.

"Core programs" means the following:

1. A solid waste program, pursuant to N.J.A.C. 7:1H-5;

2. An air pollution control program, pursuant to N.J.A.C. 7:1H-6;

3. A water pollution control program, pursuant to N.J.A.C. 7:1H-7, 8, 9 and 10;

4. A noise control program, pursuant to N.J.A.C. 7:1H-11; and

5. A site remediation program, pursuant to N.J.A.C. 7:1H-12.

"County board" means a county board of health established pursuant to N.J.S.A. 26:3A2-1 et seq. and having all the powers of a county board of health provided pursuant to law.

"County department" means a county department of health established pursuant to N.J.S.A. 26:3A2-1 et seq. with the purpose of providing environmental health programs throughout the county and other local health programs in any municipality that contracts therefor with the county board.

"Court action" means any legal or equitable proceeding before a court of competent jurisdiction.

"Court of competent jurisdiction" means any court or other tribunal with the authority under any statutory or constitutional provision to act on a matter before it.

"Department" means the Department of Environmental Protection.

"EHS site" means a site at which at least the registration quantity (as defined at N.J.A.C. 7:31-1.5) of an extraordinarily hazardous substance (as defined at N.J.A.C. 7:31-1.5) is handled, used, manufactured, stored, or capable of being produced.

"Emergency response activity" means activities to clean up, remove, prevent, contain or mitigate a discharge (as defined at N.J.S.A. 58:10-23.11b(h)) that poses an immediate threat to the environment or the public health, safety or welfare.

"Enforcement action" means any of the following in connection with a violation or alleged violation of any State statute concerning environmental health, environmental health regulation or environmental health ordinance:

1. Issuing a notice of violation or otherwise advising a person who may be liable or responsible for a violation or alleged violation that the violation exists;

2. Taking any action to direct or require a person who may be liable or responsible for the violation or alleged violation to cease or correct the violation; or

3. Taking any action to assess or collect a penalty.

"Environmental health" means those health and environmental programs relating to the control of air pollution, solid waste, hazardous waste, noise, pesticides, radiation, water pollution, discharges of petroleum and other hazardous substances, the underground storage of hazardous substances, as well as those health and environmental programs relating to responses to emergencies posing a substantial and imminent risk to public health, safety or the environment, the remediation of contaminated sites, and the protection of workers and the public from hazardous substances and toxic catastrophes.

"Environmental health ordinance" means an ordinance adopted pursuant to N.J.S.A. 26:3A2-27 and N.J.A.C. 7:1H-6.

"Environmental health regulation" means a rule or regulation promulgated under the authority of a State statute concerning environmental health.

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"EQEF" means the Environmental Quality and Enforcement Fund created pursuant to N.J.S.A. 26:3A2-35.

"Fiscal year" means any one-year period beginning on July 1 and ending on June 30 of the following year.

"Full program implementation" means the certified local health agency's receipt of delegation for all of the core programs.

"Grant" means a grant made by the Department to a certified local health agency under N.J.A.C. 7:1H-5.

"Grantee" means a certified local health agency that is the recipient of a grant.

"Hazardous substances" means all substances included within the definition of "hazardous substances" under N.J.A.C. 7:1E-1.7, including all amendments and supplements thereto.

"Hazardous waste" means any solid waste or combination of solid wastes, including toxic, corrosive, irritating, sensitizing, radioactive, biologically infectious, explosive or flammable solid waste, which poses a present or potential threat to human health, living organisms or the environment, provided that the solid waste is hazardous in accordance with the standards and procedures set forth at N.J.A.C. 7:26-8.

"Local health agency" means a county department, or regional or municipal health agency responsible, pursuant to law, for the conduct, within its area of jurisdiction, of a public health program administered by a full-time health officer.

"Matching grant" means a grant that funds no more than 50 percent of the cost of the undertaking for which the grant is made.

"Monitor" means check, test, observe, survey or inspect to determine compliance with environmental health standards.

"Noise" means any sounds of such level and duration as to be or tend to be injurious to human health or welfare, or which would unreasonably interfere with the enjoyment of life or property throughout the State or in any portions thereof, but excludes all aspects of the employer-employee relationship concerning health and safety hazards within the confines of a place of employment.

"Non-matching grant" means a grant made by the Department pursuant to N.J.S.A. 26:3A2-29(b) and N.J.A.C. 7:1H-5.6, that may fund more than 50 percent of the cost of the undertaking for which the grant is made.

"Non-matching grant fund" means the non-lapsing environmental health fund established in the Department pursuant to N.J.S.A. 26:3A2-29(b), consisting of all revenues appropriated or otherwise made available to the Department for the purpose of making grants on a non-matching basis to certified local health agencies.

"Non-transient non-community water system" means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over six months per year.

"Operating expenditures" include expenditures other than capital expenditures, including without limitation expenditures for salaries and training.

"Outputs" means inspections, investigations, enforcement actions and other quantifiable products of a certified local health agency's efforts in performing environmental health services.

"Performance standards" means the environmental health performance standards of general applicability set forth in N.J.A.C. 7:1H-4, and the program-specific environmental health performance standards set forth in N.J.A.C. 7:1H-5 through 19.

"Pest" has the meaning set forth in N.J.A.C. 7:30-1.2, including any amendments or supplements thereto.

"Pesticide" means any substance or mixture of substances labeled, designed or intended for use in preventing, destroying, repelling or mitigating any pest, or any substance or mixture of substances labeled, designed or intended for use as a defoliant, desiccant, or plant regulator; provided that the term "pesticide" shall not include any substance or mixture of substances which the United States Environmental Protection Agency does not consider to be a pesticide.

"Physical connection" means any cross-connection, by-pass, valve, pipeline, auxiliary intake, or any device that permits or may permit any flow of water into an approved public water supply from an unapproved water supply.

"Pilot program" means a delegation to one or more selected certified local health agencies pursuant to a certification of limited duration and scope, governed by the performance standards under N.J.A.C. 7:1H-19, for the purpose of generating data that the Department will consider in determining whether standards can be established for delegating administration of a program to all qualified certified local health agencies.

"Public water supply well" means a well supplying water to a public water system, as that term is defined at N.J.A.C. 7:10-12.4.

"Radiation" means any of the following:

1. The use or presence of electromagnetic radiation including radiofrequency, microwave, infrared, visible, ultraviolet, x-ray or gamma ray; sonic, infrasonic, or ultrasonic waves; particle radiation including alphas, betas, high energy electrons, neutrons, protons and other atomic or nuclear particles, in such manner as to be or tend to be injurious or dangerous to the health of the people of the State, to the industrial or agricultural potential of the State, or to the ecology of the State and its wildlife;

2. Radon gas and radon progeny, as such terms are defined at N.J.A.C. 7:28-27.2, including any amendments or supplements thereto; or

3. Low-level radioactive waste, as such term is defined at N.J.S.A. 13:1E-179(i), including any amendments or supplements thereto.

"Record" means any document, writing, photograph, sound or magnetic recording, drawing, or other similar item by which information has been preserved and from which the information can be retrieved or copied.

"Shore season" means the period:

1. Beginning on the first Monday in May of each year, provided however, that if May has five Mondays in a given year, the shore season for that year will begin on the second Monday in May; and

2. Ending on the later of:

i. The Monday following Labor Day; or

ii. The date on which the recreational bathing areas represented by a certified local health agency's monitoring stations are closed for the season.

"Solid waste" means garbage, refuse, and other discarded materials resulting from industrial, commercial and agricultural operations, and from domestic and community activities, and shall include all other waste material including liquids, except for solid animal and vegetable wastes collected by swine producers licensed by the State Department of Agriculture to collect, prepare and feed such wastes to swine on their own farms.

"Stage I grant" is a grant apportioned from:

1. The General Fund appropriation made available for grants under the Act; and

2. Other monies made available for grants before the Stage I grant is issued.

"Stage II grant" is a grant apportioned from any monies, other than monies that were used for Stage I grants, made available for grants under the Act.

"State statutes concerning environmental health," or "environmental health laws," means the following, and any amendments, supplements and replacements thereto:

1. The Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.;

2. The Comprehensive Regulated Medical Waste Management Act, N.J.S.A. 13:1E-48.1 through 48.25;

3. The Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 through 99.39, including without limitation 13:1E-99.21a through 99.21f;

4. The Noise Control Act of 1971, N.J.S.A. 13:1G-1 et seq.;

5. The Industrial Site Recovery Act, N.J.S.A. 13:1K-6 through 13;

6. The Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 through 32;

7. The Air Pollution Control Act, N.J.S.A. 26:2C-1 through 19;

8. The Air Pollution Emergency Control Act, N.J.S.A. 26:2C-26 through 36;

9. The Radiation Protection Act, N.J.S.A. 26:2D-1 et seq.;

10. The laws governing radon gas and radon progeny at N.J.S.A. 26:2D-59 through 62;

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11. The Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq.;
12. The laws governing subsurface and percolating waters, N.J.S.A. 58:4A-4.1 through 28;
13. The Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq;
14. The Water Pollution Control Act, N.J.S.A. 58:10A-1 through 20;
15. The Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 through 37;
16. The Realty Improvement Sewerage and Facilities Act, N.J.S.A. 58:11-23 through 48;
17. The Safe Drinking Water Act, N.J.S.A. 58:12A-1 through 25; and
18. The Pesticide Control Act of 1971, N.J.S.A. 13:1F-1 through 18.

"Toxic catastrophe" means a catastrophic accident from a release of extraordinarily hazardous substances (as such term is defined in N.J.A.C. 7:31-1.5, including any amendments, supplements and replacements thereto) to the environment.

"Transient non-community water system" means a non-community water system that does not regularly serve at least 25 of the same persons over six months per year.

"Unapproved water supply" means a water supply that is not an approved water supply.

"Water pollution" means the presence in or upon the surface or ground waters of this state of one or more contaminants, including any form of solid or liquid waste of any composition whatsoever, in such quantities and duration as are, or tend to be, injurious to the human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property within any portion of the State.

"Work program" means the work program submitted by a county department under N.J.A.C. 7:1H-2.1(a), for meeting the administrative standards and all applicable performance standards.

SUBCHAPTER 2. PROCEDURES FOR CERTIFICATION OF LOCAL HEALTH AGENCIES

7:1H-2.1 Application procedure for certification of county department

(a) To apply for certification as a certified local health agency, a county department shall submit to the Department a work program for meeting the administrative standards and all applicable performance standards. The work program shall be in a format prescribed by the Department and shall include the items set forth in N.J.A.C. 7:1H-2.1(a)1 through 8 below:

1. A detailed description of program objectives, including the following:

i. A list of all State statutes concerning environmental health under which the county department seeks to exercise powers and undertake duties pursuant to the Act;

ii. An explanation of the specific types of activities the county department seeks to perform in connection with each State statute concerning environmental health that the county department has listed under (a)1i above;

iii. A description of the characteristics of the county relevant to the activities the county department seeks to perform, including, for example, the rural or urban nature of the county, the distribution of population throughout the county, the location of environmentally sensitive areas (as defined at N.J.A.C. 7:1E-1.8) in the county, and the location of industrial areas in the county;

iv. A description of all county and municipal ordinances concerning environmental health, including the government entity that adopted the ordinance, the subject matter of the ordinance, the citation, the date of adoption, and the date on which the Department approved the ordinance, if any;

v. The priorities of the county department in addressing the county's needs under the state statutes concerning environmental health listed in (a)1i above, and the activities listed in (a)1ii above; and

vi. The county department's proposed strategy to enforce and restrain the violation of environmental health laws, environmental health regulations, and environmental health ordinances. The strategy includes the method by which the county department will report violations to the Department, the method by which the county department will initiate legal proceedings and maintain actions in courts of competent jurisdiction, the time frames for violations to be corrected after a notice of violation is issued, and the time frames for commencing enforcement actions.

(1) The method of reporting violations shall enable the county department to report each violation to the Department individually, promptly after the discovery of the violation, except for those specific types of violations listed in the work program that the Department agrees may be reported periodically and/or aggregated with other violations of the same type.

(2) The method of enforcement and restraint of violations shall identify the court or courts of competent jurisdiction in which the county department will take legal action, and shall provide for the county to initiate and maintain such proceedings only after consulting with and obtaining the approval of the Department, except for those specific types of violations listed in the work program for which the Department agrees that proceedings may be initiated and maintained without its consent;

2. A delineation of responsibilities for program implementation within the county, including the following:

i. An identification of all agencies and other entities involved in the county department's proposed activities under each State statute concerning environmental health;

ii. A description of the responsibilities of each agency or entity listed in (a)2i above, and documentation establishing that such agencies and entities have agreed to perform such responsibilities; and

iii. Copies of executed agreements under which the county department can exercise control over each agency or entity listed in (a)2i above. Such agencies and entities can be included in the work program only if such agreements will be in effect at or before the time that certification is issued;

3. A list of the personnel required to meet the program objectives, including the following:

i. An identification of each individual with primary responsibility for each agency and entity listed in (a)2i above, and the individual's qualifications;

ii. An identification of the job title and necessary qualifications of all other persons in each agency and entity listed in (a)2i above who are to perform duties related to State statutes concerning environmental health, provided however, that there need not be an identification of such persons by name, and provided further, that the identification shall state whether a person is currently working in the listed job title;

iii. For each person identified under (a)3i and ii above, the percentage of such person's working hours available for duties related to State statutes concerning environmental health; and

iv. A description of all programs for training and maintaining the competency of each person identified under (a)3i and ii above;

4. A list of the resources required to meet the program objectives, including the source and amount of funds to be committed to State statutes concerning environmental health, the type and location of facilities and specialized equipment to be used in connection with State statutes concerning environmental health;

5. A copy of the resolution of the county board of freeholders establishing the county board pursuant to N.J.S.A. 26:3A2-4, a copy of the action by the county board that established the county department pursuant to N.J.S.A. 26:3A2-6, and evidence that the county department is authorized by the board of freeholders and the county board to seek certification as a certified local health agency;

6. A time schedule for achieving full program implementation, including the time required for all significant intermediate steps toward program implementation identified by the county department, and the time required for each activity listed in (a)ii above;

7. Evidence that the county department has submitted the work program for review by the health department and municipal clerk

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of each municipality located in the county, and all agencies or other entities identified in the work program under N.J.A.C. 7:1H-2.1(a)2; and

8. A list of the persons, other than those identified in (a)7 above, to whom the county department has submitted the work program for review. The Department may, in its discretion, seek comments on the work program from residents of the county department's geographic jurisdiction, industries and facilities located within the geographic jurisdiction, other government entities located within the geographic jurisdiction, and representatives of environmental groups.

(b) The county department shall submit the work program described in (a) above to the Department at the following address:

Department of Environmental Protection
Office of Legal Affairs
Attention: Environmental Health Work Programs
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

7:1H-2.2 Certification of county department as certified local health agency

(a) A county department shall be deemed to be a certified local health agency upon the Department's issuance of a written certification that the county department will satisfy the administrative standards provided in this chapter, the performance standards of general applicability set forth in N.J.A.C. 7:1H-4, and performance standards for one or more of the core programs. The Department's decision to certify a county department shall be based upon its consideration of the following factors with respect to each type of activity that the county department seeks to perform (as listed pursuant to N.J.A.C. 7:1H-2.1(a)1ii):

1. The consistency of all aspects of the work program with applicable Federal and State law;

2. The probable effects of the performance of the designated activity by the county department upon the effectiveness and efficiency of the administration of programs under each State statute concerning environmental health;

3. The need for the uniform administration of programs under each State statute concerning environmental health;

4. The extent to which the work program establishes the availability of technical expertise, adequate staff levels and other resources needed to adequately administer programs under each State statute concerning environmental health throughout the county department's entire geographic jurisdiction;

5. The completeness with which the work program submitted by the county department satisfies the requirements listed in N.J.A.C. 7:1H-2.1;

6. The accuracy of the information presented in the work program;

7. The extent to which the applicant has documented that the residents of its geographic jurisdiction, industries and facilities located within the geographic jurisdiction, other government entities located within the geographic jurisdiction, and representatives of environmental groups support the undertaking by the certified local health agency to perform each activity specified in the work program;

8. With respect to any opposition expressed by persons listed in (a)7 above, the extent to which the applicant has effectively answered such opposition;

9. For pilot programs:

i. The likelihood that a pilot program performed in the county will yield data that will be helpful to the Department in determining whether the pilot program should be expanded; and

ii. Whether the data to be generated in a pilot program performed in the county will complement data generated in the same subject matter area in other counties; and

10. Any other facts establishing that the county department does or does not have the capability and determination to satisfy the performance and administrative standards provided in this chapter.

(b) In the certification issued under (a) above, the Department shall set forth the following:

1. All programs or portions of programs that the Department has delegated to the county department the authority to administer;

2. Any terms and conditions of the delegation that apply specifically to the county department;

3. All types of enforcement action that the county department is authorized to undertake itself, without consulting the Department;

4. All types of enforcement action that the county department may undertake itself, after consulting with the department on the specific enforcement case and receiving the department's approval;

5. A statement that the county department is not authorized to undertake any enforcement action not listed in (b)3 or 4 above, without the Department's express written approval of the particular enforcement action in the particular case; and

6. For pilot programs, the following information:

i. The time for which the certification will be in effect; and

ii. The scope of the pilot program.

(c) The Department shall not delegate to the county department the authority to administer any programs other than the core programs, unless the county department has received delegation for all of the core programs.

(d) The designation of a county department as a certified local health agency under this section shall not be construed as a delegation of any authority beyond that specifically listed in the certification.

7:1H-2.3 Certification of local health agency as authorized local government

(a) Any local health agency other than a county department may petition the Commissioner for certification as the authorized local government agency for the performance of environmental health services within its jurisdiction.

(b) The petition submitted under (a) above shall contain information sufficient to establish that the petitioning agency:

1. Since March 2, 1978, has been providing environmental health services that meet the administrative standards and all applicable performance standards;

2. Is willing to coordinate its environmental health programs with those of other local health agencies performing environmental health services within the county by implementing the work program of the county department; and

3. Is capable of continuing to provide environmental health services that meet the administrative standards and all applicable performance standards. The information required under this paragraph shall include, with respect to the petitioning agency and its area of jurisdiction, all information of the types required under N.J.A.C. 7:1H-2.1(a)1, 2, 3 and 4.

(c) The Commissioner shall certify the petitioning agency as the authorized local government agency for the performance of environmental health services within its jurisdiction if the Commissioner determines that:

1. The petitioning agency is providing a complete program of environmental health services that meet the administrative standards and also meet the performance standards for all programs or portions of programs that the Department has delegated to the county department the authority to administer under N.J.A.C. 7:1H-2.2(b);

2. The petitioning agency will continue to provide a complete program of environmental health services meeting such standards; and

3. The county department for the petitioning agency's county is a certified local health agency, and the county department's approved work program expressly provides for coordination of the county's environmental health programs with the petitioning agency specifically.

7:1H-2.4 Termination or suspension of certification of certified local health agency

(a) The Department may terminate or suspend the certification of a certified local health agency in accordance with the procedures set forth in (b) through (f) below. The termination or suspension may include the entire certification, or any part of the certification concerning one or more types of environmental health services. The Department shall base a decision to terminate or suspend a certification upon any of the following deficiencies in the certified local

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health agency's performance of its duties pursuant to the Act, this chapter, a certification or an agreement with the Department:

1. The failure of the certified local health agency to continue to provide environmental health services satisfying the administrative standards;

2. The failure of the certified local health agency to continue to provide environmental health services satisfying the applicable performance standards;

3. The failure of the certified local health agency to continue to provide environmental health services satisfying the requirements of the certification, or to attain full program implementation within the time specified in the certification;

4. The failure of the certified local health agency to continue to administer any of the core programs after receiving delegation to do so;

5. The failure of the certified local health agency to provide environmental health services satisfying the requirements of the grant agreement executed under N.J.A.C. 7:1H-20;

6. The expenditure of grant funds in a manner unauthorized under the grant agreement executed under N.J.A.C. 7:1H-20;

7. The disclosure of confidential information in violation of any applicable confidentiality rules of the Department;

8. The making of a material misstatement or omission in documents submitted to the Department or in other communications with the Department, including without limitation a work program, periodic report, grant application, or request for disbursement of a grant;

9. The failure to advise the Department of any material change in any material information submitted to the Department, as required under N.J.A.C. 7:1H-2.5;

10. The failure to disclose information requested by the Department in connection with an audit pursuant to N.J.A.C. 7:1H-3.6, an enforcement action, or in any other procedure under the Act or this chapter;

11. The provision of environmental health services outside the scope of the certified local health agency's certification (including, without limitation, the provision of environmental health services in a manner inconsistent with the work program or by entities other than those designated in the work program), unless the certified local health agency has the authority to provide such environmental health services pursuant to any statute other than the Act;

12. The deposit of fees, fines or penalties collected pursuant to the Act, or pursuant to an ordinance enacted under the authority of the Act, anywhere other than the EQEF; or

13. The use of monies in the EQEF for any purpose other than the responsibilities of the certified local health agency under the Act or this chapter.

(b) If the Department determines that any of the deficiencies listed in (a)1 through 6 above exist with respect to a certified local health agency, the Department shall so notify a certified local health agency in writing. In the notice, the Department shall describe such circumstances, and advise the certified local health agency that the Department may terminate or suspend certification if such deficiencies have not been rectified within 30 days following receipt of the notice.

(c) The Department may extend the time allotted under (b) above for rectifying the deficiencies in question, if the Department determines that the certified local health agency is making good faith efforts toward rectification, and that good cause exists to extend the allotted time.

(d) If the certified local agency fails to rectify the noted deficiencies within the time allotted under (b) and (c) above, the Department may suspend the certified local health agency's certification. During the suspension, the local health agency shall not be considered a certified local health agency. The suspension shall continue until the Department determines that the deficiencies have been rectified.

(e) The Department may terminate a certified local health agency's certification, if:

1. The Department determines that the certified local agency has not made good faith efforts toward rectification during the time allotted under (b) and (c) above or during a suspension under (d) above; or

2. The Department determines that the deficiencies cannot be rectified within a reasonable amount of time; or

3. The Department determines, based upon the certified local health agency's record of deficiencies, that the certified local health agency is not qualified to provide environmental health services in accordance with the administrative standards or is not qualified to provide environmental health services in accordance with the applicable performance standards.

(f) Before suspending or terminating certification, the Department shall afford the certified local health agency an opportunity for a hearing in accordance with 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.

(g) As an alternative to suspending or terminating certification, or as a condition of reinstating certification, the Department may require the certified local health agency to take such action as is reasonably necessary to resolve the deficiencies, such as obtaining or improving equipment or facilities or obtaining additional training for personnel.

7:1H-2.5 Duty to notify Department and other persons of material changes in information submitted

(a) A certified local health agency shall provide written notice of any material change in any material information contained in documents submitted to the Department or in other communications with the Department, including without limitation a work program, periodic report, grant application, or request for disbursement of a grant. The certified local health agency shall provide the notice to the Department and to all entities listed in N.J.A.C. 7:1H-2.1(a)7.

(b) The certified local health agency shall make the notification required under (a) above within 30 days after the change occurred.

SUBCHAPTER 3. ENVIRONMENTAL HEALTH STANDARDS OF ADMINISTRATIVE PROCEDURE

7:1H-3.1 Provision of environmental health services

A certified local health agency shall provide or shall arrange for and oversee the provision of environmental health services for the territorial area within such agency's jurisdiction, which services meet the administrative standards, the performance standards of general applicability under N.J.A.C. 7:1H-4, and all program-specific performance standards applicable to the programs delegated to the certified local health agency.

7:1H-3.2 Powers of certified local health agency

(a) A certified local health agency has the following powers pursuant to the Act:

1. A certified local health agency may maintain an action in a court of competent jurisdiction to enforce, or to restrain the violation of, any environmental health law, any environmental health regulation, or any environmental health ordinance, which violation occurs, or threatens to occur, within the geographic jurisdiction of the certified local health agency;

2. A certified local health agency may initiate legal proceedings for a violation of any environmental health law, environmental health regulation, or any environmental health ordinance, including the making and issuing of complaints and summonses by serving the summons upon the violator and filing the complaint promptly with a court having jurisdiction. The county counsel or the prosecutor of the municipality in which a violation has occurred shall be authorized to act as counsel to the certified local health agency for prosecution of the violation, and any penalties collected from the prosecution shall be deposited in the EQEF of the county or municipality prosecuting such violations; and

3. Such powers as are set forth in the certified local health agency's certification or in the performance standards.

(b) The certified local health agency shall exercise the powers listed in (a) above in accordance with the administrative standards, all applicable performance standards, the certification, and any grant agreement in effect under N.J.A.C. 7:1H-20.

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7:1H-3.3 Duties of certified local health agency

(a) A certified local health agency shall have the following duties:

1. Investigate citizen complaints concerning environmental health;

2. Provide public information and citizen education services concerning environmental health;

3. Monitor amendments, supplements and replacements of the State statutes concerning environmental health, environmental health regulations, and environmental health ordinances;

4. Report to the Department violations of the State statutes concerning environmental health, environmental health regulations, and environmental health ordinances;

5. Gather evidence of violations described in (a)4 above;

6. Provide witnesses for any court action concerning violations described in (a)4 above; and

7. Perform such other duties as are listed in the administrative standards, the performance standards, the certification, and any grant agreement in effect under N.J.A.C. 7:1H-20.

(b) The certified local health agency shall perform the duties listed in (a) above in accordance with the administrative standards, all applicable performance standards, the certification, and any grant agreement in effect under N.J.A.C. 7:1H-20.

7:1H-3.4 Administrative standards for performance of duties and exercise of powers

(a) A certified local health agency shall exercise its powers under N.J.A.C. 7:1H-3.2 above and perform its duties under N.J.A.C. 7:1H-3.3 above in accordance with the following administrative standards:

1. For the purpose of investigating citizen complaints concerning environmental health, the certified local health agency shall:

i. Establish one person or office as a contact point for receiving citizen complaints by telephone, in person, and in writing;

ii. Advise the public, within the geographic jurisdiction of the certified local health agency, of the contact point in (a)1i above;

iii. Establish a procedure for determining what type of environmental health issues each complaint concerns, whether it is concerns an occurrence or condition within the geographic jurisdiction of the certified local health agency, and whether it is within the scope of the certified local health agency's certification;

iv. Refer the citizen complaint from the contact point to the agencies or persons designated in the certified local health agency's work program, in compliance with the applicable performance standards;

v. Investigate the citizen complaint, in accordance with the certified local health agency's work program and in compliance with the applicable performance standards; and

vi. Maintain records of all citizen complaints received, on forms approved by the Department, and including at least the identity of the complainant, the date and time of the complaint, the nature of the complaint, to whom the complaint was referred, and the disposition of the complaint.

2. In consultation with the Department, the certified local health agency shall determine the appropriate means of providing public information and citizen education services concerning environmental health, which may include (without limitation) pamphlets and literature, seminars, conferences and public meetings, newspaper, radio and television.

3. For the purpose of monitoring State statutes concerning environmental health and environmental health regulations, the certified local health agency shall subscribe to or otherwise obtain access to State statutes and amendments thereto, the New Jersey Register, and Title 7 of the New Jersey Administrative Code. For the purpose of monitoring environmental health ordinances, the certified local health agency shall arrange for consultation with any agency within its geographic jurisdiction having the authority to adopt environmental health ordinances, prior to the adoption.

4. For the purpose of reporting violations, the certified local health agency shall follow the procedure established in the work program upon which its certification is based, and comply with all applicable requirements listed in the performance standards; provided however, that notwithstanding the Department's approval of any procedure for reporting specific types of violations only on an aggregate basis and/or in periodic reports, the certified local health agency shall immediately report to the Department each individual violation involving a particular facility, person or type of violation if the Department gives the notice of a potential enforcement action provided under N.J.A.C. 7:1H-4.3(b).

5. For the purpose of gathering evidence of violations, the certified local health agency shall follow the procedure established in the work program upon which its certification is based, and comply with all applicable requirements listed in the performance standards.

6. At the Department's request, the certified local health agency shall provide the witnesses requested by the Department in connection with the preparation and conduct of a court action for violations discovered or investigated by the certified local health agency or its designee.

7. For the purpose of initiating legal proceedings and maintaining actions to enforce and restrain the violation of environmental health laws, environmental health regulations, and environmental health ordinances, the certified local health agency shall follow the procedure established in the work program upon which its certification is based, and comply with all applicable requirements listed in the performance standards and all applicable requirements of State statutes concerning environmental health. Except as specifically provided in the certification or the applicable performance standards, the certified local health agency shall inform the Department of an enforcement action at least five days before commencing a proceeding in a court of competent jurisdiction.

8. The certified local health agency shall maintain in effect and enforce all agreements with other agencies and entities described in N.J.A.C. 7:1H-2.1(a)2iii.

7:1H-3.5 Annual reporting

(a) A certified local health agency administering an environmental health program shall submit annual reports to the Department, providing a general summary of the certified local health agency's environmental health services under this chapter for the preceding calendar year. The annual report is in addition to the monthly reports required under N.J.A.C. 7:1H-4.2. The certified local health agency shall submit the annual report by February 15 of each year. The certified local health agency shall include the following information in the annual report, with respect to the certified local health agency itself and each agency or other entity identified in N.J.A.C. 7:1H-2.1(a)2:

1. The number of personnel performing activities in each subject matter area in which the certified local health agency is certified under N.J.A.C. 7:1H-2.2, and any change in that number projected for the coming year;

2. A description of the training, experience or other expertise of each employee or class of employees or consultant identified above;

3. A list of the equipment the certified local health agency uses in performing its responsibilities under this chapter, and of any additional equipment that the certified local health agency expects to become necessary in the coming year;

4. A description of any additional needs expected for the upcoming calendar year in the areas listed in (a)1, 2 and 3 above;

5. A summary of the costs the certified health agency incurring in performing its responsibilities under this chapter in the preceding year, and a description of any changes projected for the coming year;

6. A financial accounting of the preceding year, including the following information:

i. The amount of fees assessed and the amount of fines and penalties assessed;

ii. The amount of fees collected and the amount of fines and penalties collected;

iii. The amount deposited into the EQEF; and

iv. An itemized list of the disbursements from the EQEF, including the amount of each disbursement, the recipient, and the purpose; and

7. A summation of the data provided in the monthly reports submitted under N.J.A.C. 7:1H-4.2.

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7:1H-3.6 Audits

(a) The Department may audit a certified local health agency and other agencies or entities identified in the work program under N.J.A.C. 7:1H-2.1(a)2. The audit may include any of the following:

1. A review of outputs produced by the certified local health agency and other agencies or entities named in the work program;

2. A review of the certified local health agency's field activities such as sampling, inspections, and investigations to verify compliance with the following:

i. The Act;

ii. The performance standards and other provisions of this chapter;

iii. The certification; and

iv. Any training provided by or at the direction of the Department;

3. An audit of the receipt and expenditure of grant funds;

4. An audit of the receipt and expenditure of monies required to be deposited into the EQEF;

5. A review to confirm that none of the grounds for suspension or termination of certification listed in N.J.A.C. 7:1H-2.4(a) exist; and

6. A review of any other activities of the certified local health agency and other agencies or entities named in the work program that are performed pursuant to the Act, this chapter, the certification, the grant agreement and any other agreement between the Department and the certified local health agency.

7:1H-3.7 Environmental quality and enforcement fund

(a) Each county and municipality with a certified local health agency shall establish an Environmental Quality and Enforcement Fund (EQEF).

(b) Any fees, fines or penalties collected pursuant to the Act or pursuant to an ordinance enacted under the authority of the Act shall be deposited into the respective county or municipal EQEF. Any person or entity who collects such a fee, fine or penalty on behalf of the certified local health agency or pursuant to an agreement with the certified local health agency shall deposit the proceeds into the EQEF, and shall not be entitled to retain any portion of the proceeds.

(c) Monies deposited into the EQEF shall be dedicated to the use of the certified local health agency in carrying out its responsibilities under the Act and this chapter. Fee revenues shall be used solely to support activities in the environmental health program from which the fees are derived. Penalty revenues may be dedicated to support any or all of the environmental health programs that the certified local health agency's certification authorizes it to implement.

(d) Pursuant to (c) above, monies in the EQEF may be used to fund the certified local health agency's share of the cost of an undertaking that is partially funded by a matching grant. The certified local health agency shall expend such monies in accordance with the grant agreement under N.J.A.C. 7:1H-20.

(e) The governing body of each county or municipality with an EQEF shall identify the person responsible for making deposits into the EQEF, making disbursements from the EQEF and maintaining the EQEF. The certified local health agency shall advise the Department of the name and address of this person and a telephone number at which the person can be reached during normal business hours.

SUBCHAPTER 4. ENVIRONMENTAL HEALTH PERFORMANCE STANDARDS OF GENERAL APPLICABILITY

7:1H-4.1 Scope of subchapter

This subchapter sets forth environmental health performance standards which apply to certified local health agencies administering any environmental health program. These standards apply in addition to the performance standards for specific environmental health programs under N.J.A.C. 7:1H-5 through 19.

7:1H-4.2 Monthly reporting

(a) A certified local health agency administering an environmental health program shall submit monthly reports to the Department, summarizing the environmental health compliance monitoring and enforcement activities the agency has taken in the preceding calendar month. The certified local health agency shall include in its monthly report the following information for each compliance monitoring and enforcement activity:

1. Except as provided in (a)2 below, the name and address of the facility which was the subject of the activity, and of its owner or operator;

2. If the subject of the activity was a suspected violation which the certified local health agency was unable to attribute to a particular facility, the location at which the suspected violation was asserted to have occurred;

3. The citation of the statute or rule governing the subject matter of the activity;

4. The nature of the activity;

5. The date of the activity;

6. Whether the certified local health agency determined that a violation occurred or exists at the subject facility;

7. If a violation occurred or exists, the citation of the statute or rule violated, and a brief description of the act or omission from which the violation arose, of the enforcement action taken by the certified local health agency, and of any additional action taken or changes in status since the previous report;

8. If the certified local health agency took enforcement action, the dates on which each enforcement action was taken;

9. The resolution of the violation. If the certified local health agency has taken enforcement action to collect a penalty, the report shall include the amount of the penalty. If the certified local health agency and the alleged violator have entered into an agreement to remedy the violation, the report shall include the date of the agreement, a description of the remedy, any compliance milestones, the date of actual or projected final compliance, and the current status of the remedy. If the certified local health agency has withdrawn the enforcement action, the report shall explain the reasons for the withdrawal;

10. A description of any litigation involving the certified local health agency's performance of its responsibilities under this chapter, including the nature of the litigation and its status;

11. Any other information required in the applicable program-specific performance standard under N.J.A.C. 7:1H-5 through 19;

12. Any other information that is reasonably necessary to enable the Department to determine whether problems such as recurring or serious violations exist, whether the certified local health agency is addressing those problems, and whether additional involvement by the Department is necessary; and

13. Any other information that is reasonably necessary to identify the certified local health agency and the subject of the report.

(b) The certified local health agency shall submit the monthly report within 15 days after the end of the calendar month which is the subject of the report.

(c) The certified local health agency shall submit the monthly report to:

Office of Local Environmental Management
Department of Environmental Protection
Attention: CEHA Monthly Reports
401 East State Street
CN 422
Trenton, New Jersey 08625-0422

(d) Beginning on (date), the certified local health agency shall submit the monthly report electronically in a manner compatible with the Department's computer system, either on diskette or by electronic transmission of data. The certified local health agency may elect to submit the monthly report electronically at any time before electronic reporting is required.

7:1H-4.3 Coordination of efforts with Department

(a) A certified local health agency shall coordinate its compliance monitoring and enforcement efforts under this chapter with the Department, to avoid duplication of effort, to avoid conflicting actions in particular enforcement cases, and to avoid inconsistent actions in similar types of enforcement cases.

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(b) The Department may notify the certified local health agency that the Department is preparing or undertaking an enforcement action concerning a particular facility, person or type of violation. After the certified local health agency receives this notification:

1. To avoid duplicative or conflicting efforts, the certified local health agency shall refrain from taking any action concerning that facility, person or type of violation without the express approval of the Department;

2. The certified local health agency shall provide any reasonable assistance which the Department requests concerning that facility, person or type of violation; and

3. Neither the certified local health agency nor any of its officials, employees and agents shall disclose the notification to any person unless disclosure is ordered by a court of competent jurisdiction, or unless the Department expressly authorizes the specific disclosure. Authorization of one disclosure shall not be construed as authorization for any further disclosure.

(c) The certification sets forth the types of enforcement actions that the certified local health agency is authorized to undertake itself, without consulting the Department, and the types of enforcement action that the certified local health agency may undertake itself and must refer to the Department. For any type of enforcement action not listed in the certification, the certified local health agency may undertake the action only after consulting with the department on the specific enforcement case and receiving the department's approval. For all types of enforcement actions required to be referred to the Department, the certified local health agency shall provide any reasonable assistance that the Department requests in conducting the enforcement action. The certified local health agency may refer to the Department an enforcement action within the scope of its authority under its certification, if it determines that the action requires resources or expertise beyond that which it has available, and the Department concurs.

(d) In referring an enforcement action to the Department, the certified local health agency shall provide the following documents relevant to the action:

1. Any inspection report forms and inspection checklists completed by the certified local health agency;

2. Any notice of violation issued by the certified local health agency;

3. Any record of citizen complaints; and

4. Copies of all relevant permits and certificates, other than those issued by the Department.

(e) Any notice of violation issued by the certified local health agency shall be on a form provided or approved by the Department, containing at least the information required under N.J.A.C. 7:1H-4.10.

(f) The certified local health agency shall seek penalties and other relief only in accordance with the following:

1. Applicable Department regulations;

2. Applicable State statutes concerning environmental health; and

3. Applicable county or municipal ordinances approved by the Department.

(g) In connection with any enforcement action undertaken by the Department, or any criminal action undertaken by the State, the certified local health agency shall make available all documentation and other evidence which the certified local health agency has collected or prepared which is relevant to the action. In addition, the certified local health agency shall make available all persons who participated in the collection or preparation of such evidence to provide testimony in connection with the action.

(h) The certified local health agency shall cooperate with the efforts of other certified local health agencies pursuant to N.J.A.C. 7:1H-4.11(d)3.

7:1H-4.5 Training of certified local health agency personnel

(a) The officials, employees and agents of a certified local health agency shall successfully complete all training provided by or on behalf of the Department for all subject matter areas in which such persons perform activities under this chapter. Examples of training include Department-sponsored or Department-approved training courses; review with Department staff of Department protocols and standard operating procedures; and participation in inspections, investigations and enforcement activities conducted by the Department.

(b) In addition to any training specified in the program-specific performance standards, all officials, employees and agents of the certified local health agency shall have training and experience sufficient to qualify as expert witnesses for enforcement proceedings arising from their activities under this chapter.

7:1H-4.6 Number and frequency of inspections and investigations

(a) Unless the applicable performance standard in N.J.A.C. 7:1H-5 through 19 below requires that a certified local health agency perform a certain number of inspections or investigations over a certain period or time, or that it perform inspections or investigations at a certain frequency, a certified local health agency shall:

1. Perform at least as many inspections and investigations per year as is required under the certification and/or the grant contract pursuant to N.J.A.C. 7:1H-20;

2. Perform inspections and investigations at least as frequently as is required under the certification and/or the grant agreement pursuant to N.J.A.C. 7:1H-20; and

3. Inspect at least as many facilities per year as is required under the certification and/or the grant agreement pursuant to N.J.A.C. 7:1H-20.

(b) As a condition of receiving a grant under N.J.A.C. 7:1H-20, a certified local health agency may agree to perform more inspections or investigations, or more frequent inspections or investigations, than the grant contract, certification or applicable performance standard requires. In this event, the grant agreement executed under N.J.A.C. 7:1H-20 will set forth the required frequency or number of inspections.

7:1H-4.7 Documentation of inspections and investigations

(a) A certified local health agency performing an inspection or an investigation shall document the inspection or investigation on forms provided by the Department.

(b) In documenting the inspection or investigation, the certified local health agency shall include the following information:

1. Information sufficient to identify the subject of the inspection or investigation, such as the name and address of a facility and its owner or operator;

2. The date of the inspection or investigation, and of any suspected violation;

3. The name and address of the registered agent of the person who is the subject of the inspection or investigation, or other person authorized to accept service of process on behalf of the subject person;

4. The name and telephone number of each person participating in the inspection or investigation, including without limitation the person leading the inspection or investigation;

5. The name and telephone number of each person interviewed in connection with the inspection or investigation, including without limitation the complainant if any;

6. For an investigation of a suspected violation, or an inspection to verify compliance with applicable laws and regulations, the following:

i. Information sufficient to show the presence or absence of each element necessary to establish that a violation has or has not occurred;

ii. Information sufficient to establish that a person investigated as possibly being responsible for the suspected violation is or is not liable for the violation;

iii. A description of the damage to public health, safety and the environment, if any, resulting from any violation;

iv. An identification of any hazardous substances, hazardous wastes, pollutants, pesticides or other substances relevant to a determination that a violation has or has not occurred;

v. The date on which any violation occurred; and

vi. The date on which the certified local health agency determined that any violation ceased;

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7. If the certified local health agency collected any samples in connection with the inspection or investigation, the following information:

i. The field sample number;

ii. The type or types of samples collected; and

iii. The total number of samples collected;

8. Any other information required in the applicable program-specific performance standard under N.J.A.C. 7:1H-5 through 19; and

9. Any other types of information noted on the Department form which is reasonably related to complete preparation of an enforcement case.

(c) In addition to assembling the information listed in (b) above, the certified local health agency shall document the inspection or investigation by taking the following actions, if reasonably necessary to support the conclusion that a violation does or does not exist:

1. Visually inspect and photograph the location at which the suspected violation occurred, and other locations (for example, locations at which materials involved in the suspected violation were generated, or offices) relevant to the suspected violation;

2. Inspect and photograph equipment, processes, building interiors, exteriors and appurtenances, vehicle exteriors (including license plates and other identifying markings), interiors and contents;

3. Collect samples of air, soil, sediments, surface water, ground water, hazardous waste, and other substances relevant to the violation;

4. Copy records;

5. Interview persons reasonably likely to have knowledge relevant to confirming or disproving the facts listed under (b) above and record their statements. For any such person who provides information relevant to confirming or disproving the facts listed under (b) above, exercise best efforts to obtain an affidavit from each such person, stating such information; and

6. Take any actions required under the program-specific performance standards in N.J.A.C. 7:1H-5 through 19.

7:1H-4.8 Emergency notification

A certified local health agency shall notify the Department by telephone (at (609) 292-7172) immediately after becoming aware of any violation of a State statute concerning environmental health, environmental health regulation or environmental health ordinance which poses a significant immediate threat to the environment or to public health or safety. The scope of the certified local health agency's obligation under this section is not limited by N.J.A.C. 7:1H-4.12.

7:1H-4.9 Assistance in emergency response actions

The certified local health agency shall provide all assistance which the Department requests in connection with a response to circumstances which pose a significant immediate threat to the environment or to public health or safety, if such threat is within the scope of a program for which the certified local health agency is certified under N.J.A.C. 7:1H-2.2.

7:1H-4.10 Notices of violation

(a) The certification may authorize the certified local health agency to issue notices of violation in certain circumstances. The certified local health agency shall include the following information in any notice of violation:

1. The name and address of the person asserted to be responsible for the violation, and the location at which the violation is asserted to have occurred;

2. The date on which the violation is asserted to have occurred.

3. A description of the act or omission from which the violation arose;

4. The citation of the law or regulation which has been violated;

5. The amount of the penalty for which the alleged violator may be liable as a result of the violation;

6. A description of the action the alleged violator must take in order to eliminate the violation; and

7. A statement that the alleged violator is liable for a penalty unless the action described under (a)4 above is taken within a given amount of time.

7:1H-4.11 Right of entry and inspection

(a) In exercising authority delegated pursuant to this chapter, a certified local health agency may enter and inspect any building or place pursuant to the same extent the Department is authorized to make such entry and inspection under any of the following:

1. N.J.S.A. 13:1D-9(d);

2. N.J.S.A. 13:1E-42.1;

3. N.J.S.A. 13:1E-65;

4. N.J.S.A. 13:1F-9;

5. N.J.S.A. 26:2C-9 and 9.1;

6. N.J.S.A. 26:2D-9;

7. N.J.S.A. 58:10A-6(g);

8. N.J.S.A. 58:10A-30;

9. N.J.S.A. 58:12A-4;

10. N.J.S.A. 58:16A-9; and

11. Any other statute granting authority to the Department which has been delegated to the certified local health agency.

(b) The right of entry provided under (a) above is subject to the following limitations:

1. The certified local health agency may exercise the right of entry under a statute referenced in (a) above only for the purposes provided under that statute; and

2. The right of entry is subject to all limitations set forth in the statutes referenced in (a) above, and in rules promulgated by the Department under the authority of such statutes.

(c) Except as authorized by the Department or in connection with an emergency response activity, the certified local health agency shall enter a building or place only during normal business hours.

(d) A certified local health agency shall exercise the right of entry provided under (a) above only in connection with activities that:

1. Are within the scope of its certification;

2. Are located within the geographic jurisdiction of the certified local health agency, except as provided in (d)3 below;

3. Are located outside the geographic jurisdiction of the certified local health agency, but only if the following requirements are satisfied:

i. The activities have a direct effect upon that geographic jurisdiction (for example, an odor from a facility outside the geographic jurisdiction that interferes with the use and enjoyment of property within the jurisdiction); and

ii. The certified local health agency exercising the right of entry has made a good faith effort to contact the certified local health agency with jurisdiction over the site in question, in order to coordinate the inspection or investigation; and

4. The certified local health agency has elected to perform, unless such activities are mandatory under any provision of this chapter.

7:1H-4.12 Construction of program-specific performance standards

(a) No provision of any program-specific performance standards in N.J.A.C. 7:1H-5 through 19 shall be construed to impose any duty upon a certified local health agency administering a program pursuant to such standards, or to grant any authority to such a certified local health agency, unless:

1. The duty or authority is within the scope of the certified local health agency's certification;

2. The duty or authority concerns a facility, operation, activity or condition within the geographic jurisdiction of the certified local health agency; and

3. Either the certified local health agency has elected to perform the activity which is the subject of the duty or authority, or the applicable provision of the program-specific performance standard provides that the activity is mandatory.

(b) A certified local health agency administering a program pursuant to any of the performance standards in this chapter shall do so throughout its entire geographic jurisdiction.

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SUBCHAPTER 5. ENVIRONMENTAL HEALTH PERFORMANCE STANDARDS FOR A SOLID WASTE MANAGEMENT PROGRAM

7:1H-5.1 General performance standards for administering a solid waste management program

(a) A certified local health agency may administer a solid waste management program, to the extent authorized in its certification.

(b) A certified local health agency conducting a solid waste management program shall do so throughout its entire geographic jurisdiction in accordance with the following:

1. The Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.;

2. The rules promulgated by the Department under the authority of the Solid Waste Management Act, N.J.A.C. 7:26;

3. The performance standards of general applicability set forth in N.J.A.C. 7:1H-4; and

4. The standards set forth in (d) and (e) below; and

5. The standards applicable to the particular program areas set forth in this subchapter.

(c) A term used in this subchapter, not defined in N.J.A.C. 7:1H-1.4, and defined in N.J.A.C. 7:26-1.4, 7:26-3A.5, 7:26-3A.6 or 7:26A-1.3, shall have the meaning set forth in N.J.A.C. 7:26-1.4, 7:26-3A.5 or 7:26A-1.3. If the term is defined in more than one of these sections, the term shall have the meaning most specifically applicable in the relevant context. For example, if the term is used in connection with regulated medical waste, the definition in N.J.A.C. 7:26-3A.5 shall control. If the term is used in connection with recycling centers, the definition in N.J.A.C. 7:26A-1.3 shall control.

(d) The certified local health agency shall enforce the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and the rules and regulations promulgated thereunder, N.J.A.C. 7:26, applicable to the program areas administered by the certified local health agency. The certified local health agency shall identify violators and initiate appropriate enforcement actions. The certification outlines the types of enforcement action which the certified local health agency is authorized to undertake itself, without consulting the Department, and the types of enforcement action which the certified local health agency may undertake itself, after consulting with the department on the specific enforcement case and receiving the department's approval. The certified local health agency shall assess penalties only in accordance with N.J.A.C. 7:26-5.

(e) The certified local health agency shall investigate and document illegal and noncomplying solid waste activities occurring within its geographic jurisdiction, and advise the Department of such activities. Examples of such activities include operating a solid waste facility without a permit or otherwise engaging in the collection or disposal of solid waste without a permit, and disposing of solid waste at an unpermitted solid waste facility. The certified local health agency shall investigate allegations of such activities brought to the attention of the agency by the Department, by citizen complaints, or by other sources. Within 10 working days after receiving notice of the suspected activity, the certified local health agency shall inspect the location at which the suspected activity is occurring or has occurred, provided however that the Department may specify a shorter time when necessary to respond to exigent circumstances in a particular case.

7:1H-5.2 Performance standards for monitoring solid waste disposal

(a) A certified local health agency shall monitor solid waste disposal, in compliance with the requirements of this section.

(b) The certified local health agency shall inspect solid waste delivered to solid waste facilities, to determine whether:

1. The solid waste facilities' permits issued under N.J.A.C. 7:26-2 authorize such facilities to accept for disposal the waste delivered to them;

2. The transporter supplies a completed and signed waste origin/waste disposal form to the facility operator, as required by N.J.A.C. 7:26-2.13(c);

3. The waste origin/waste disposal form accurately states the place of origin of the waste, pursuant to N.J.A.C. 7:26-2.13(a)6;

4. The transporter has accurately identified the type of waste;

5. The facility's recording of scale data conforms with the information supplied on the waste origin/waste disposal form, as required under N.J.A.C. 7:26-2.13(c)3; and

6. The facility operator has signed the completed waste origin/waste disposal form, as required under N.J.A.C. 7:26-2.13(c)3.

(c) The certified local health agency shall determine whether:

1. The operators of solid waste facilities are maintaining daily records of wastes received in accordance with N.J.A.C. 7:26-2.13(a);

2. Discrepancies exist between the daily records and the wastes actually received; and

3. Discrepancies of the type described in N.J.A.C. 7:26-2.13(e)2 exist in the monthly summaries prepared under N.J.A.C. 7:26-2.13.

(d) The certified local health agency shall determine whether recyclable materials, required to be source-separated under the applicable district recycling plan prepared under N.J.S.A. 13:1E-99.13, are being disposed of at solid waste facilities.

7:1H-5.3 Performance standards for inspecting sanitary landfills

(a) A certified local health agency may inspect sanitary landfills. A certified local health agency which elects to inspect sanitary landfills shall comply with the requirements of this section.

(b) The certified local health agency shall inspect all sanitary landfills located in its geographic jurisdiction. For each such sanitary landfill, the certified local health agency shall determine whether:

1. The sanitary landfill is in compliance with the general facility operational requirements under N.J.A.C. 7:26-2.11 (except for the operational requirement in N.J.A.C. 7:26-2.11(b)5), and the operational, maintenance, inspection and monitoring requirements under N.J.A.C 7:26-2A.8; and

2. The sanitary landfill is in compliance with all provisions of its permit issued under N.J.A.C. 7:26-2, including the approved final O and M manual maintained at the facility pursuant to N.J.A.C. 7:26-2.11(b)18 and the operational site plan maps submitted under N.J.A.C. 7:26-2.10(b)6 and 7:26-2A.5.

(d) The certified local health agency shall inspect all sanitary landfills at which operations have been terminated, and report the following information to the department annually for each such sanitary landfill inspected:

1. Whether all solid waste at the landfill is covered with final cover, and whether final cover vegetation is present;

2. Whether any cracks, erosion swales, rills or uneven areas in the final cover appear reasonably likely to allow extrusion of solid waste, infiltration or ponded water;

3. Whether side slopes are adequately maintained;

4. Whether run-on and run-off are adequately controlled;

5. Whether methane gas is adequately vented or evacuated;

6. Whether leachate is adequately collected and/or controlled;

7. Whether access to the landfill is adequately controlled; and

8. Whether the landfill site is adequately conformed to the surrounding area.

7:1H-5.4 Performance standards for inspecting transfer stations and materials recovery facilities

(a) A certified local health agency may inspect transfer stations and materials recovery facilities. A certified local health agency which elects to inspect transfer stations and materials recovery facilities shall comply with the requirements of this section.

(b) The certified local health agency shall inspect all transfer stations and materials recovery facilities located in its geographic jurisdiction. For each such transfer station or materials recovery facility, the certified local health agency shall determine whether:

1. The facility is in compliance with the general facility operational requirements under N.J.A.C. 7:26-2.11 (except for the operational requirement in N.J.A.C. 7:26-2.11(b)5);

2. Solid waste is processed, tipped, sorted, stored and compacted at the facility only within the confines of a totally enclosed building, as required by N.J.A.C 7:26-2B.5(b)2, and that dust does not migrate outside the confines of the building, as required by N.J.A.C 7:26-2B.5(b)7;

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3. The sound levels from operations of the facility do not exceed limits established under the Noise Control Regulations, N.J.A.C. 7:29; and

4. The facility is in compliance with all provisions of its permit issued under N.J.A.C. 7:26-2 or 7:26-1.10, as applicable, including the approved final O and M manual maintained at the facility pursuant to N.J.A.C. 7:26-2.11(b)18 and the operational site plan maps submitted under N.J.A.C. 7:26-2.10(b)6 and 7:26-2B.5(c).

7:1H-5.5 Performance standards for inspecting thermal destruction facilities

(a) A certified local health agency may inspect thermal destruction facilities. A certified local health agency which elects to inspect thermal destruction facilities shall comply with the requirements of this section.

(b) The certified local health agency shall inspect all thermal destruction facilities with a design capacity of at least 9.6 tons per day located in its geographic jurisdiction. For each such thermal destruction facility, the certified local health agency shall determine whether:

1. The facility is in compliance with the general facility operational requirements under N.J.A.C. 7:26-2.11 (except for the operational requirement in N.J.A.C. 7:26-2.11(b)5);

2. Unprocessible or potentially explosive materials and unauthorized waste types are removed from the waste stream before processing, as required by N.J.A.C 7:26-2B.8(f);

3. When equipment or systems malfunction to prevent normal handling or processing of waste, determine whether the facility operator has notified the Department, is pursuing corrective measures, and is receiving only that quantity and type of waste that can be handled, stored and processed notwithstanding the malfunction, as required by N.J.A.C 7:26-2B.8(g);

4. Unprocessed incoming waste, facility process waste residues and effluents, and recovered materials are stored in accordance with N.J.A.C. 7:26-2B.8(i);

5. The sound levels from operations do not exceed limits established under the Noise Control Regulations, N.J.A.C. 7:29;

6. The operator of the facility is keeping records of analyses of residual ash in accordance with N.J.A.C. 7:26-2B.8(r); and

7. The facility is in compliance with all provisions of its permit issued under N.J.A.C. 7:26-2, including the approved final O and M manual maintained at the facility pursuant to N.J.A.C. 7:26-2.11(b)18 and the operational site plan map submitted under N.J.A.C. 7:26-2.10(b)6.

7:1H-5.6 Performance standards for inspecting compost facilities

(a) A certified local health agency administering a solid waste management program shall inspect all compost facilities located in its geographic jurisdiction.

(b) For each compost facility, the certified local health agency shall determine whether:

1. The facility is in compliance with the general facility operational requirements under N.J.A.C. 7:26-2.11 (except for the operational requirement in N.J.A.C. 7:26-2.11(b)5); and

2. The facility is in compliance with:

i. All provisions of its permit issued under N.J.A.C. 7:26-2, including the approved final O and M manual maintained at the facility pursuant to N.J.A.C. 7:26-2.11(b)18 and the operational site plan map submitted under N.J.A.C. 7:26-2.10(b)6; or

ii. For a leaf composting facility (leaves only), all provisions of its exemption under N.J.A.C. 7:26-1.11; or

iii. For a leaf composting facility (leaf mulching operations only), all provisions of its exemption under N.J.A.C. 7:26-1.12;

3. No odors associated with solid waste are detected off the site of the facility in any area of human occupancy as prohibited under N.J.A.C. 7:26-2.11(b)5;

4. No illegal dumping of solid waste is occurring at the facility; and

5. No leachate from the facility is draining or being discharged into surface water or groundwater except as authorized under the NJPDES rules at N.J.A.C. 7:14A.

7:1H-5.7 Performance standards for inspecting solid waste transportation

(a) A certified local health agency shall monitor the transportation of solid waste within and through its geographic jurisdiction.

(b) The certified local health agency shall monitor the transportation of solid waste within and through its geographic jurisdiction, through random checks at solid waste facilities, observation and investigation of transportation and disposal activities, and observation and investigation of depots from which devices used for the transportation of solid waste are dispatched. Through this monitoring, the certified local health agency shall determine whether:

1. Any person transporting solid waste within or through the certified local health agency's geographic jurisdiction has an approved registration statement as required by N.J.A.C. 7:26-3.2, or is exempt from this requirement under N.J.A.C. 7:26-3.3;

2. Any person transporting solid waste within or through the geographic jurisdiction is in compliance with the general transporter requirements listed in N.J.A.C. 7:26-3.4, including without limitation whether vehicles transporting solid waste are displaying proper registration markings, carrying the current Department registration certificate, and displaying proper markings regarding the capacity of the solid waste container;

3. Any person transporting solid waste within or through the geographic jurisdiction is doing so in accordance with the interdistrict and intradistrict solid waste flow rules at N.J.A.C. 7:26-6. The certified local health agency shall monitor the transportation of solid waste leaving the geographic jurisdiction and the transportation of solid waste to facilities within the geographic jurisdiction to establish compliance with the waste flow rules;

4. No person transporting solid waste within or through the jurisdiction is disposing of such waste except at a facility authorized to accept such waste;

5. Any person transporting sewage sludge or other fecal material, bulky wastes, asbestos or asbestos-containing waste is in compliance with the requirements specific to those types of waste under N.J.A.C. 7:26-3.5;

6. The cleanup of smoking, smoldering or burning solid waste is performed as required by N.J.A.C. 7:26-3.7; and

7. Any person transporting source-separated Class B recyclable materials to a location within the geographic jurisdiction of the certified local health agency delivers such materials only to a facility which has received Department approval to receive, store, process or transfer such materials under N.J.A.C. 7:26A-3.1.

7:1H-5.8 Performance standards for inspecting recycling centers and other facilities conducting recycling activities

(a) A certified local health agency may inspect recycling centers. A certified local health agency which elects to inspect recycling centers shall comply with the requirements of this section.

(b) The certified local health agency shall inspect all recycling centers located in its geographic jurisdiction. For each such recycling center, the certified local health agency shall determine whether:

1. A facility receiving, storing, processing or transferring Class B recyclable material either has the Department's written approval to do so or is exempt from the requirement of obtaining the Department's approval;

2. A facility receiving, storing, processing or transferring Class B recyclable material is conducting such activities in accordance with the terms of any approval issued under N.J.A.C. 7:26A-3;

3. A person operating mobile recycling equipment is in compliance with N.J.A.C. 7:26A-3.3;

4. A person operating a tire, tree stump, tree part or wood waste recycling center is in compliance with N.J.A.C. 7:26A-3.8;

5. All residue generated at the recycling center has been disposed of in compliance with N.J.A.C. 7:26;

6. The facility is operated in compliance with the operational standards at N.J.A.C. 7:26A-4.1;

7. The operator of the facility has submitted the recycling tonnage reports required under N.J.A.C. 7:26A-4.4;

8. The facility recovers refrigerant fluid and delivers it for reprocessing, stores it or disposes of it as required by N.J.A.C. 7:26A-5.1; and

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9. The operations of the facility are in compliance with all applicable county ordinances concerning recycling.

(c) The certified local health agency shall inspect all facilities within its geographic jurisdiction which conduct recycling activities, but are exempt from the requirement to obtain a general or limited approval under N.J.A.C. 7:26A-3. The certified local health agency shall determine that:

1. Each such facility continues to satisfy the requirements for its exemption under N.J.A.C. 7:26A-1.4(a);

2. Each such facility conducts its activities in accordance with the requirements of N.J.A.C. 7:26A-1.4(b); and

3. The operator of the facility has submitted the recycling tonnage reports required under N.J.A.C. 7:26A-4.4(c).

(d) If persons occupying commercial or institutional premises have been exempted pursuant to N.J.S.A. 13:1E-99.16 from source separation requirements of a municipal ordinance, the certified local health agency shall determine that such persons:

1. Have provided for the recycling of recyclable materials from solid waste generated at such premises; and

2. Have provided to the municipality in which the premises are located written documentation of the total number of tons of each material recycled.

7:1H-5.9 Performance standards for inspecting destination facilities and intermediate handling facilities

(a) A certified local health agency may inspect facilities at which regulated medical waste is subjected to intermediate handling, or which are destination facilities. A certified local health agency which elects to inspect intermediate handlers and destination facilities shall comply with the requirements of this section.

(b) The certified local health agency shall inspect all destination facilities and intermediate handlers located in its geographic jurisdiction.

1. For each destination facility and intermediate handler, the certified local health agency shall determine whether:

i. The owner or operator of the facility is registered in accordance with N.J.A.C. 7:26-3A.8;

ii. Any storage of regulated medical waste at the facility is in compliance with N.J.A.C. 7:26-3A.12;

iii. Any reuse of containers at the facility is in compliance with N.J.A.C. 7:26-3A.13; and

iv. The owner or operator of the facility complies with the tracking form requirements of N.J.A.C. 7:26-3A.39 and 3A.40, and the recordkeeping requirements of N.J.A.C. 7:26-3A.41.

2. For each regulated medical waste incinerator, the certified local health agency shall determine whether the facility operates in accordance with all applicable provisions of its permit or of its temporary authorization under N.J.A.C. 7:26-3A.37.

3. For each facility at which regulated medical waste is subjected to intermediate handling, the certified local health agency shall determine whether the following requirements are satisfied, in addition to all requirements set forth in (b)1 above:

i. The operator of the facility segregates all regulated medical waste as required under N.J.A.C. 7:26-3A.10, and packaging it as required under N.J.A.C. 7:26-3A.11;

ii. The operator of the facility labels each package of regulated medical waste as required by N.J.A.C. 7:26-3A.14, and marks the package as required by N.J.A.C. 7:26-3A.15;

iii. The operator of the facility prepares and distributes tracking forms as required by N.J.A.C. 7:26-3A.19;

iv. The operator of the facility complies with the recordkeeping requirements of N.J.A.C. 7:26-3A.21; and

v. Any operator accepting regulated medical waste accompanied by a tracking form complies with the tracking form and recordkeeping requirements of N.J.A.C. 7:26-3A.38 through 3A.41.

7:1H-5.10 Performance standards for inspecting regulated medical waste transportation

(a) A certified local health agency may monitor the transportation of regulated medical waste within and through its geographic jurisdiction. A certified local health agency which elects to monitor regulated medical waste transportation shall comply with the requirements of this section.

(b) The certified local health agency shall monitor the transportation of regulated medical waste within and through its geographic jurisdiction. Such monitoring includes the following activities:

1. Inspection of vehicles used to transport regulated medical waste, and of equipment used to transport regulated medical waste by rail. The certified local health agency may conduct such inspections only at the place from which such vehicles are dispatched, or at the location to which such vehicles are delivering regulated medical waste;

2. Random checks of generators, intermediate handlers and destination facilities;

3. Observation and investigation of transportation and disposal activities;

4. Inspection of records of all persons transporting regulated medical waste within or through its geographic jurisdiction; and

5. Such other activities as the Department determines to be reasonably necessary to evaluate compliance with the laws and regulations applicable to regulated medical waste.

(c) Through the monitoring required under (b) above, the certified local health agency shall determine whether:

1. Any person transporting regulated medical waste is either registered in accordance with N.J.A.C. 7:26-3A.8, or is exempt from registration under N.J.A.C. 7:26-3A.17(a);

2. Any person transporting regulated medical waste is in registered as a solid waste transporter in accordance with N.J.A.C. 7:26-3.2, and has a certificate of public convenience and necessity as required by N.J.S.A. 48:13A-6;

3. Any person transporting regulated medical waste is doing so in compliance with the requirements applicable to transporters generally, listed in N.J.A.C. 7:1H-5.7(b)1, 2 and 6;

4. Any regulated medical waste being transported satisfies all of the requirements for transporter acceptance of waste listed in N.J.A.C. 7:26-3A.28;

5. Any vehicle used for transporting regulated medical waste satisfies the requirements listed in N.J.A.C. 7:26-3A.30; and

6. Any person transporting regulated medical waste is in compliance with the tracking form and recordkeeping requirements of N.J.A.C. 7:26-3A.31 through 3A.34.

SUBCHAPTER 6. ENVIRONMENTAL HEALTH PERFORMANCE STANDARDS FOR AN AIR POLLUTION CONTROL PROGRAM

7:1H-6.1 General performance standards for administering an air pollution control program

(a) A certified local health agency may administer an air pollution control program, to the extent authorized in its certification.

(b) A certified local health agency conducting an air pollution control program shall do so throughout its entire geographic jurisdiction in accordance with the following:

1. The Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq.;

2. The Air Pollution Emergency Control Act, N.J.S.A. 26:2C-26 et seq.;

3. The rules promulgated by the Department under the authority of the Air Pollution Control Act, N.J.A.C. 7:27, 7:27A and 7:27B;

4. The performance standards of general applicability set forth in N.J.A.C. 7:1H-4;

5. The standards set forth in (d) through (g) below; and

6. The standards applicable to the particular program areas set forth elsewhere in this subchapter.

(c) A term used in this subchapter, not defined in N.J.A.C. 7:1H-1.4, and defined in N.J.A.C. 7:27, shall have the meaning set forth in N.J.A.C. 7:27. If the term is not defined in N.J.A.C. 7:27, and is defined in N.J.A.C. 7:27A-3.1, the term shall have the meaning set forth in N.J.A.C. 7:27A-3.1. If the term is not defined in N.J.A.C. 7:27 or 7:27A-3.1, the term shall have the meaning set forth in N.J.A.C. 7:27B-1.1.

(d) Except as provided in N.J.A.C. 7:1H-4.12, no provision of this subchapter shall be construed to impose any duty upon a certified local health agency administering an air pollution control program, or to grant any authority to such a certified local health agency, in connection with a source operation or facility with the potential to

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emit at least 25 tons of VOC or NO_x annually, or the potential to emit at least 100 tons of any other air contaminant annually.

(e) The certified local health agency shall investigate and document allegations of violations of the Air Pollution Control Act or of the rules and regulations promulgated thereunder, which allegations are brought to the attention of the agency by the Department, by citizen complaints, or by other sources. Within one working day after receiving notice of the suspected activity, the certified local health agency shall inspect the location at which the alleged violation is occurring or has occurred, unless the Department expressly authorizes a longer response time when it refers an allegation to the certified local health agency. The certified local health agency shall notify the Department immediately upon discovering a release of air contaminants in a quantity or concentration that poses a potential threat to public health, welfare or the environment or that might reasonably result in citizen complaints.

(f) A person may perform inspections or investigations on behalf of the certified local health agency only after completing the course "Fundamentals of Air Pollution" provided by Rutgers University, or "Fundamentals of Environmental Compliance Inspections," "Basic Health and Safety for Field Activities," "Principles and Practice of Air Pollution Control," or "Basic Source Inspection Techniques" provided by the Environmental and Occupational Health Science Institute, or another training course which the Department approves based upon a determination that it is substantially equivalent.

(g) To the extent authorized under its certification, the certified local health agency shall enforce the provisions of the Air Pollution Control Act and of the rules promulgated thereunder applicable to the program areas administered by the certified local health agency. The certified local health agency shall identify violators and initiate appropriate enforcement actions. The certification outlines the types of enforcement action which the certified local health agency is authorized to undertake itself, without consulting the Department, and the types of enforcement action which the certified local health agency may undertake itself, after consulting with the department on the specific enforcement case and receiving the department's approval. The certified local health agency shall assess penalties only in accordance with N.J.A.C. 7:27A.

7:1H-6.2 Performance standards for open burning

(a) A certified local health agency administering an air pollution control program shall monitor open burning, in compliance with the requirements of this section.

(b) The certified local health agency shall determine whether violations of the prohibition on unpermitted open burning under N.J.A.C. 7:27-2.2 and 2.3 are occurring.

(c) The Department shall provide the certified local health agency with a copy of each permit issued by the Department authorizing open burning within the agency's geographic jurisdiction. The certified local health agency shall monitor open burning performed pursuant to each such permit, and determine whether the requirements of the permit are satisfied. The types of open burning to be monitored include the following:

1. Open burning of infested plant life, pursuant to N.J.A.C. 7:27-2.5;

2. Prescribed open burning in accordance with a plan approved by the Bureau of Forest Fire Management in the Department, pursuant to N.J.A.C. 7:27-2.6;

3. Open burning of plant life following an emergency which has produced excessive quantities of plant wastes, pursuant to N.J.A.C. 7:27-2.7;

4. Open burning of dangerous material, pursuant to N.J.A.C. 7:27-2.8;

5. Open burning of herbaceous plant life and hedgerows, pursuant to N.J.A.C. 7:27-2.9;

6. Open burning of orchard prunings and cullings on the premises where grown, pursuant to N.J.A.C. 7:27-2.10;

7. Open burning of plant life to clear land for commercial agricultural uses, pursuant to N.J.A.C. 7:27-2.11; and

8. Open burning of substances or material representing an imminent hazard to the public health, welfare or safety, pursuant to N.J.A.C. 7:27-2.12.

7:1H-6.3 Performance standards for smoke from combustion of fuel

(a) A certified local health agency administering an air pollution control program may monitor the combustion of fuel in stationary indirect heat exchangers, marine installations, mobile sources, stationary internal combustion engines and stationary turbine engines. The operations included in this monitoring do not include combustion of fuel in direct heat exchangers, manufacturing processes, or the operation of motor vehicles on public highways. A certified local health agency which elects to monitor such combustion of fuel shall comply with the requirements of this section.

(b) The certified local health agency shall determine whether:

1. The combustion of fuel in any stationary indirect heat exchanger results in the emission of smoke into the outdoor air in violation of the standards under N.J.A.C. 7:27-3.2;

2. The combustion of fuel in the indirect heat exchanger of any marine installation results in the emission of smoke into the outdoor air in violation of the standards under N.J.A.C. 7:27-3.3;

3. The combustion of fuel in any mobile source results in the emission of smoke into the outdoor air in violation of the standards under N.J.A.C. 7:27-3.4; and

4. The combustion of fuel in any stationary internal combustion engines and stationary turbine engines results in the emission of smoke into the outdoor air in violation of the standards under N.J.A.C. 7:27-3.5.

(c) In addition to the training requirements applicable under N.J.A.C. 7:1H-4, persons investigating smoke emissions on behalf of the certified local health agency shall satisfactorily complete the "Visual Emissions Certification" course provided by Rutgers University or the "Visible Emissions Enforcement Training and Certification" course provided by the Environmental and Occupational Health Sciences Institute before conducting any such investigations. Such persons shall satisfactorily complete the "Visual Emissions Recertification" course provided by Rutgers University or the "Visible Emissions Enforcement Recertification" provided by the Environmental and Occupational Health Sciences Institute within six months after completing the "Visual Emissions Certification" course, and every six months thereafter.

7:1H-6.4 Performance standards for air pollution

(a) A certified local health agency administering an air pollution control program shall implement the prohibition of air pollution under N.J.A.C. 7:27-5.2, in accordance with the requirements of this section.

(b) The certified local health agency shall determine whether any person has caused, suffered, allowed or permitted the emission of any substance into the outdoor atmosphere in quantities which result in air pollution.

7:1H-6.5 Performance standards for emission of particles from manufacturing processes

(a) A certified local health agency administering an air pollution control program may monitor the emission of particles from manufacturing processes, excluding indirect heat exchangers and incinerators. A certified local health agency that elects to monitor the emission of particles from manufacturing processes shall do so in accordance with the requirements of this section.

(b) The certified local health agency shall determine whether the emission of particles from any manufacturing process complies with the opacity limitations for emissions from any stack or chimney under N.J.A.C. 7:27-6.2(d).

(c) In addition to the training requirements applicable under N.J.A.C. 7:1H-4, persons investigating the emission of particles from manufacturing operations on behalf of the certified local health agency shall satisfactorily complete the "Visual Emissions Certification" course provided by Rutgers University or the "Visible Emissions Enforcement Training and Certification" course provided by the Environmental and Occupational Health Sciences Institute before conducting any such investigations. Such persons shall

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satisfactorily complete the "Visual Emissions Recertification" course provided by Rutgers University or the "Visible Emissions Enforcement Recertification" course provided by the Environmental and Occupational Health Sciences Institute within six months after completing the "Visual Emissions Certification" course, and every six months thereafter.

7:1H-6.6 Performance standards concerning permits and certificates

(a) A certified local health agency administering an air pollution control program shall assist the Department in connection with N.J.A.C. 7:27-8, Permits and Certificates, in accordance with the requirements of this section.

(b) The certified local health agency shall inspect gas stations, dry cleaners, auto body shops, paint spray booths and other types of facilities that the Department designates as contributing materially to air pollution in the agency's geographic jurisdiction. The purpose of such inspections is to determine whether any person has constructed, installed or altered any equipment or control apparatus without first having obtained a permit required under N.J.A.C. 7:27-8.3(a).

(c) The certified local health agency shall determine whether any person has used or caused to be used equipment or control apparatus without a certificate required under N.J.A.C. 7:27-8.3(b).

(d) The certified local health agency shall determine whether all applicable permits and certificates are readily available for inspection on the operating premises, as required under N.J.A.C. 7:27-8.3(d).

(e) Upon the Department's request, the certified local health agency shall inspect the construction, installation or alteration of equipment or control apparatus and determine whether it is as described and authorized in the permit approved by the Department.

(f) Upon the Department's request, the certified local health agency shall inspect the use of equipment or control apparatus and any components connected to, attached to or serving such equipment or control apparatus, and determine whether the use is in accordance with the applicable permit and certificate.

7:1H-6.7 Performance standards for sulfur in fuels

(a) A certified local health agency administering an air pollution control program may assist the Department in administering N.J.A.C. 7:27-9, Sulfur in Fuels, and N.J.A.C. 7:27-10, Sulfur in Solid Fuels. A certified local health agency electing to assist in such administration shall do so in accordance with the requirements of this section.

(b) The certified local health agency shall obtain and submit fuel samples to the Department, as requested by the Department. The certified local health agency shall complete sampling documents and chain-of-custody forms sufficient to enable the Department or the certified local health agency to have the sampling data admitted as evidence in an enforcement proceeding.

7:1H-6.8 Performance standards for emissions from incinerators

(a) A certified local health agency administering an air pollution control program may monitor emissions from incinerators (other than incinerators listed in the exception under N.J.A.C. 7:27-11.6). A certified local health agency electing to perform such monitoring shall do so in accordance with the requirements of this section.

(b) The certified local health agency shall determine whether the emissions from any incinerator comply with:

1. The smoke emission standards under N.J.A.C. 7:27-11.3(b);

2. The standards for emission of particles of unburned waste or ash under N.J.A.C. 7:27-11.3(c); and

3. The odor standards under N.J.A.C. 7:27-11.3(d).

(c) In addition to the training requirements applicable under N.J.A.C. 7:1H-4, persons investigating emissions from incinerators on behalf of the certified local health agency shall satisfactorily complete the "Visual Emissions Certification" course provided by Rutgers University before conducting any such investigations. Such persons shall satisfactorily complete the "Visual Emissions Recertification" course provided by Rutgers University within six months after completing the "Visual Emissions Certification" course, and every six months thereafter.

7:1H-6.9 Performance standards for control and prohibition of air pollution from diesel-powered motor vehicles

A certified local health agency administering an air pollution control program may control emissions from diesel-powered motor vehicles. A certified local health agency electing to control such emissions shall monitor diesel-powered motor vehicles to determine whether the engines of such vehicles are idling for an amount of time greater than that allowed under N.J.A.C. 7:27-14.3.

7:1H-6.10 Performance standards for control and prohibition of air pollution from gasoline-fueled motor vehicles

A certified local health agency administering an air pollution control program may control emissions from gasoline-fueled motor vehicles. A certified local health agency electing to control such emissions shall monitor gasoline-fueled motor vehicles to determine whether the engines of such vehicles are idling for an amount of time greater than that allowed under N.J.A.C. 7:27-15.6.

7:1H-6.11 Performance standards for control and prohibition of air pollution by volatile organic compounds

(a) A certified local health agency administering an air pollution control program shall implement a program for the control and prohibition of air pollution from volatile organic compounds pursuant to N.J.A.C. 7:27-16. The certified local health agency shall implement this program with respect to gasoline, in accordance with the requirements of this section. In addition, the certified local health agency may elect to also implement this program for volatile organic compounds other than gasoline. A certified local health agency making this election shall implement the program in accordance with the requirements of this section.

(b) The certified local health agency shall determine whether:

1. Any storage tank having a maximum capacity of 1,000 gallons or greater, storing any VOC having a vapor pressure of greater than 13.0 pounds per square inch absolute (672 millimeters of mercury) at the actual temperature existing at or near the liquid surface, is equipped with a vapor control system satisfying the requirements of N.J.A.C. 7:27-16.2(c);

2. Any transfers of gasoline and other VOCs, and of other substances into gasoline vapor-laden delivery vessels, are performed in accordance with the requirements of N.J.A.C. 7:27-16.3 and 16.4;

3. Any transfers of gasoline and other VOCs from delivery vessels into stationary storage tanks comply with N.J.A.C. 7:27-16.3(c) and 16.4(c), as applicable;

4. Any delivery vessel containing gasoline or other VOCs complies with the requirements of N.J.A.C. 7:27-16.3(i) and 16.4(f), as applicable;

5. Any transportation of gasoline or other VOCs complies with the requirements of N.J.A.C. 7:27-16.3(m) and 16.4(l), as applicable;

6. All equipment and control apparatus required under the applicable provisions of N.J.A.C. 7:27-16.3 and 16.4, as applicable, are installed at any facility at which gasoline or other VOC is loaded, any facility at which gasoline is transferred into a gasoline vapor laden vehicular fuel tank, and any gasoline dispensing facility;

7. The use of any open top tank complies with all applicable requirements of N.J.A.C. 7:27-16.6; and

8. The use of any surface cleaner or oil-water separator complies with the applicable requirements of N.J.A.C. 7:27-16.6.

(c) A certified local health agency implementing an air pollution control program shall determine that all surface coating operations are conducted in compliance with N.J.A.C. 7:27-16.7. In addition, the certified local health agency may elect to implement N.J.A.C. 7:27-16.7 for graphic arts operations. A certified local health agency making such an election shall determine that all graphic arts operations are conducted in compliance with N.J.A.C. 7:27-16.7.

(d) A certified local health agency implementing an air pollution control program may monitor boilers, stationary gas turbines, stationary internal combustion engines and asphalt plants for compliance with applicable requirements of N.J.A.C. 7:27-16.

7:1H-6.12 Performance standards for control and prohibition of air pollution by toxic substances

(a) A certified local health agency administering an air pollution control program shall control air pollution from toxic substances with

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respect to emissions of tetrachloroethylene (perchloroethylene) from dry cleaners. In addition, the certified local health agency may elect to control air pollution from other toxic substances and from other sources. The certified local health agency implementing these programs shall do so in accordance with the requirements of this section.

(b) The certified local health agency shall determine whether any person who has caused, suffered, allowed or permitted the emission of any toxic substance listed in N.J.A.C. 7:27-17.3, Table 1 into the outdoor atmosphere has done so in accordance with the registration required under N.J.A.C. 7:27-17.3.

7:1H-6.13 Performance standards for control and prohibition of air pollution by oxides of nitrogen

A certified local health agency administering an air pollution control program may control air pollution from oxides of nitrogen. A certified local health agency making this election shall monitor major NO_x facilities for compliance with applicable provisions of N.J.A.C. 7:27-19.

7:1H-6.14 Performance standards for control and prohibition of air pollution by architectural coatings and consumer products

(a) A certified local health agency administering an air pollution control program may control air pollution from architectural coatings and consumer products. A certified local health agency electing to control such air pollution shall do so in accordance with the requirements of this section.

(b) The certified local health agency shall inventory retailers selling or offering for sale consumer products listed in N.J.A.C. 7:27-23.3 for proper labeling and record keeping requirements. The certified local health agency shall document and submit violations to the department for necessary action or process violations in a court of competent jurisdiction.

7:1H-6.15 Performance standards for control and prohibition of air pollution by vehicular fuels

(a) A certified local health agency administering an air pollution control program may control air pollution from vehicular fuels. A certified local health agency electing to control such air pollution shall do so in accordance with the requirements of this section.

(b) The certified local health agency shall determine whether:

1. The gasoline which each retailer provides, stores, offers for sale and sells between May 1 and September 15 of each year has a Reid vapor pressure no greater than 9.0 pounds per square inch. To make this determination, the certified local health agency shall review the records of the retailer maintained pursuant to N.J.A.C. 7:27-25.4(b);

2. The gasoline that each retailer provides, stores, offers for sale and sells has an oxygen content of at least 2.7 percent during any applicable control period. To make this determination, the certified local health agency shall review the records of the retailer maintained pursuant to N.J.A.C. 7:27-25.4(b).

(c) The certified local health agency shall determine that each retailer which provides, stores, offers for sale or sells gasoline complies with the labeling requirements under N.J.A.C. 7:27-25.8, at all times such labeling requirements are applicable.

SUBCHAPTER 7. ENVIRONMENTAL HEALTH PERFORMANCE STANDARDS FOR A SAFE DRINKING WATER PROGRAM

7:1H-7.1 General performance standards for administering a Safe Drinking Water program

(a) A certified local health agency may administer a Safe Drinking Water program, to the extent authorized in its certification.

(b) A certified local health agency conducting a Safe Drinking Water program shall do so in accordance with the following:

1. The Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq. and the rules promulgated thereto, N.J.A.C. 7:10 (except N.J.A.C. 7:10-11 and 14);

2. The laws governing subsurface and percolating waters, N.J.S.A. 58:4A-4.1 et seq.;

3. The laws governing interconnections between approved public potable water supplies and unapproved water supplies, N.J.S.A. 58:11-9.1 et seq. and the rules promulgated by the Department thereto at N.J.A.C. 7:10-10;

4. The performance standards of general applicability set forth in N.J.A.C. 7:1H-4; and

5. The applicable safe drinking water program performance standards set forth in this subchapter. A certified local health agency implementing a safe drinking water program is subject to the requirements of N.J.A.C. 7:1H-7.1 through 7.4, 7.17 and 7.18, and the following:

i. If the certified local health agency is implementing a non-public water supply program, N.J.A.C. 7:1H-7.5 through 7.9;

ii. If the certified local health agency is certifying non-community water systems, N.J.A.C. 7:1H-7.10 through 7.13;

iii. If the certified local health agency is implementing a physical connection program, N.J.A.C. 7:1H-7.14 through 7.16.

(c) A term used in this subchapter, not defined in N.J.A.C. 7:1H-1.4, and defined in N.J.A.C. 7:10-10.1 or 12.4, shall have the meaning set forth in N.J.A.C. 7:10-10.1 or 12.4.

7:1H-7.2 General monitoring and inspection requirements

(a) The certified local health agency may require a noncommunity or nonpublic water system owner to take water quality samples for any contaminant reasonably likely to pose a significant risk to public health. The certified local health agency shall have the samples analyzed by a laboratory certified by the Department pursuant to N.J.A.C. 7:18 for the method necessary to identify and quantify the contaminant.

(b) If the Department has not certified a laboratory to identify and quantify the contaminant in question pursuant to N.J.A.C. 7:18, the certified local health agency shall consult with the Department to determine how the samples are to be analyzed.

(c) The certified local health agency shall determine whether the analysis of water quality samples under (a) or (b) above indicates a failure to comply with either the State Primary Drinking Water regulations under N.J.A.C. 7:10-5 or the Secondary Drinking Water regulations under N.J.A.C. 7:10-7. The certified local health agency shall consult with the Department to determine the potential public health impacts of any contaminant for which there is no promulgated maximum contaminant level.

(d) If the analysis of water quality samples under (a) or (b) above indicates an exceedance of the primary or secondary drinking water standard, or shows that a contaminant for which there is no promulgated maximum contaminant level has a significant potential adverse impact on public health, within 30 days after receiving the analysis the certified local health agency shall:

1. Notify the owner of the water system that the exceedance has occurred; and

2. Inform the owner of the water system of the immediate and long-term remedial actions needed to protect public health and bring the water system into compliance.

7:1H-7.3 General requirements for investigations and enforcement

(a) To the extent authorized by its certification and this section, the certified local health agency shall investigate and document allegations of violations of applicable laws. For purposes of this subchapter, "applicable laws" means the laws and regulations listed in N.J.A.C. 7:1H-7.1(b)1 through 3 that are applicable to the program areas administered by the certified local health agency.

(b) The allegations to be investigated and documented include those brought to the attention of the agency by the Department, by citizen complaints, or by other sources.

(c) The certified local health agency shall investigate construction activities and monitoring activities related to 1 through 4 below, and determine whether they are in compliance with the laws and regulations described in (a) above (including, without limitation, the State Primary Drinking Water regulations under N.J.A.C. 7:10-5 and the Secondary Drinking Water regulations under N.J.A.C. 7:10-7):

1. Public non-community water systems other than systems owned by agencies or authorities of Federal, State or county government;

2. Non-public water systems;

3. Well drilling; and

4. Physical connections.

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(d) When necessary to investigate a citizen complaint or an allegation that an applicable law has been violated, the certified local health agency shall conduct field inspections and collect water quality samples.

(e) The certified local health agency shall conduct the investigation required under (c) and (d) above within 10 working days after receiving notice of the suspected violation, unless the Department expressly authorizes a longer response time when it refers an allegation to the certified local health agency.

(f) Within 30 days after confirming a violation in an investigation under (c) or (d) above, the certified local health agency shall issue a Notice of Violation ("NOV") to the alleged violator unless, within that time, the alleged violator attains compliance or executes a written agreement to attain compliance.

(g) If within 30 days after the NOV has been issued, the alleged violator has neither attained compliance nor executed a written agreement to attain compliance, the certified local health agency shall initiate an action in a court of competent jurisdiction to compel compliance and levy penalties. The certified local health agency shall initiate this action within 60 days after the date on which the NOV was issued.

(h) Subject to the limits set forth in the certification, the certified local health agency's authority for enforcement actions includes the penalty provisions of N.J.S.A. 58:12A-10 and N.J.A.C. 7:10-3 for violations of the Safe Drinking Water Act including those associated with noncommunity and nonpublic water systems; the penalty and injunctive relief provisions contained in N.J.S.A. 58:11-9.8 through 9.10 and N.J.S.A. 7:10-3.1 and 3.2 for violations associated with physical connections; and the penalty provisions in N.J.S.A. 58:12A-10, 58:4A-4.2, 58:4A-24 and N.J.A.C. 7:10-3 for violations associated with well drilling.

(i) In establishing priorities for the use of its resources in determining which enforcement actions to pursue, the certified local health agency shall establish as its first enforcement priority the commencement and completion of enforcement actions for violations of maximum contaminant levels.

7:1H-7.4 Performance standards for nonpublic water supply program

A certified local health agency administering a safe drinking water program may implement a nonpublic water supply program. A certified local health agency implementing a nonpublic water supply program shall do so in compliance with the requirements of N.J.A.C. 7:1H-7.5 through 7.9.

7:1H-7.5 Additional enforcement requirements for nonpublic water supplies

(a) If the certified local health agency determines that a well was drilled without a valid State well permit pursuant to N.J.A.C. 7:10-12.40 and N.J.A.C. 7:10-12.41, the certified local health agency shall take enforcement action in accordance with N.J.A.C. 7:1H-7.3(f) through (h).

(b) If the certified local health agency determines that a well was drilled by a person other than a well driller licensed in accordance with N.J.A.C. 58:4A-6, the certified local health agency shall take enforcement action in accordance with N.J.A.C. 7:1H-7.3(f) through (h).

(c) If the certified local health agency determines that a well has been abandoned and has not been sealed, the certified local health agency shall take enforcement action in accordance with N.J.A.C. 7:1H-7.3(f) through (h) to order the owner of the well to seal the well.

7:1H-7.6 Performance standards for certifying nonpublic potable water systems

(a) A certified local health agency shall certify every new, altered or replacement well serving a nonpublic system. In certifying a well, the certified local health agency shall conduct an on-site inspection and determine the following:

1. That the owner of the well has obtained a valid State well permit required under N.J.S.A. 58:4A-14;

2. That the well has been constructed in accordance with the conditions of the permit listed in (a)1 above and any applicable local ordinances;

3. That the well was drilled by a well driller licensed in accordance with N.J.S.A. 58:4A-6;

4. That if the well was required to have been drilled by a master well driller or journeyman well driller, the well was drilled by a driller of this class;

5. That the proposed location of the well is the same as the location depicted on the permit issued under (a)1 above. If the proposed well location is different from that approved in the State well permit, the certified local health agency shall not issue an approval or sanction drilling of the well until a new State well permit is obtained, and shall direct the owner of the well to obtain a new permit;

6. That the location of the well, as depicted on the State well permit approval under (a)1 above, is in accordance with N.J.A.C. 7:10-12.13(a);

7. That the owner of the well has submitted all information required in the application pursuant to N.J.A.C. 7:10-12.41 and 12.42, as applicable, documenting conformance with the applicable construction standards;

8. That if the constructed well is a replacement well, the well being replaced has been abandoned and sealed in accordance with N.J.A.C. 7:9-9;

9. That the well record and the certified local health agency's on-site inspection establish conformance with the construction standards and permit conditions;

10. That any deviation from construction standards or permit conditions has been approved by the department in accordance with N.J.A.C. 7:10-12.6;

11. That the quality of the raw water from the well has been tested as required by N.J.A.C. 7:10-12.31; and

12. That the raw water from the well either meets the standards for bacteriological and physical and chemical quality requirements of N.J.A.C. 7:10-12.31, or has been disinfected and/or treated as required under N.J.A.C. 7:10-12.31.

(b) To make the determinations required under (a) above, the certified local health agency shall inspect the construction of the well, review all information in the application submitted under N.J.A.C. 7:10-12.41 or 12.42, review the State well record, and make such other investigations as are necessary to make the determinations. The certified local health agency shall provide the Department with written confirmation of these determinations, on an inspection form provided or approved by the Department. The written confirmation shall also include the name and license number of the well driller.

(c) The certified local health agency shall include in its certification of the well verification that the requirements in this section have been met.

7:1H-7.7 Performance standards for inspecting well sealing activities

(a) The certified local health agency shall require that any well that is abandoned or improperly or illegally constructed is sealed in accordance with N.J.A.C. 7:9-9.

(b) The certified local health agency shall confirm that any abandonment or sealing in deviation from the standards in N.J.A.C. 7:9-9 was approved by the Department in accordance with N.J.A.C. 7:9-9.1(a).

(c) In performing the work required under (a) and (b) above, the certified local health agency shall review the well sealing report submitted to the Department under N.J.A.C. 7:9-9.1(f).

7:1H-7.8 Training

No individual may perform inspection duties under N.J.A.C. 7:1H-7.5 through 7.8 on ehalf of a certified local health agency unless within the preceding five years the individual has attended a training seminar conducted or sponsored by the Department regarding proper well drilling, well construction and well sealing techniques.

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7:1H-7.9 Performance standards for certifying a public non-community water system

(a) A certified local health agency certifying public non-community water systems is subject to the requirements of N.J.A.C. 7:1H-7.10 through 7.13.

(b) A certified local health agency shall certify every new, altered or replacement public non-community water system, other than systems owned by agencies or authorities of Federal, State or county government. Before issuing the certification, the certified local health agency shall conduct an on-site inspection and determine the following:

1. That the owner of the system has obtained a valid State well permit required under N.J.S.A. 58:4A-14 for the well serving the system;

2. That the well serving the system has been constructed in accordance with the conditions of the permit listed in (b)1 above and all applicable local ordinances;

3. That the well serving the system was drilled by a well driller licensed in accordance with N.J.S.A. 58:4A-6;

4. That if the well serving the system was required to have been drilled by a master well driller or journeyman well driller, the well was drilled by a driller of this class;

5. That the proposed location of the well serving the system is the same as the location depicted on the permit issued under (b)1 above. If the proposed well location is different from that approved in the State well permit, the certified local health agency shall not issue an approval or sanction drilling of the well until a new State well permit is obtained, and shall direct the owner of the well to obtain a new permit;

6. That the location of the well serving the system, as depicted on the State well permit approval under (b)1 above, is in accordance with N.J.A.C. 7:10-12.13(a);

7. That the system has been constructed in accordance with all applicable construction standards in N.J.A.C. 7:10-12;

8. That the owner of the well has submitted all information required in the application pursuant to N.J.A.C. 7:10-12.41 and 12.42, as applicable, documenting conformance with the applicable construction standards;

9. That if the constructed well is a replacement well, the well being replaced has been abandoned and sealed in accordance with N.J.A.C. 7:9-9;

10. That the well record and the certified local health agency's on-site inspection establish conformance with the construction standards and permit conditions;

11. That any deviation from construction standards or permit conditions has been approved by the department in accordance with N.J.A.C. 7:10-12.6;

12. That the quality of the raw water from the well has been tested as required by N.J.A.C. 7:10-12.31; and

13. That the raw water from the well either meets the standards for bacteriological and physical and chemical quality requirements of N.J.A.C. 7:10-12.31, or has been disinfected and/or treated as required under N.J.A.C. 7:10-12.31.

(c) To make the determinations required under (a) above, the certified local health agency shall inspect the construction of the well, review all information in the application submitted under N.J.A.C. 7:10-12.41 or 12.42, review the State well record, and make such other investigations as are necessary to make the determinations. The certified local health agency shall provide the Department with written confirmation of these determinations, on an inspection form provided or approved by the Department. The written confirmation shall also include the name and license number of the well driller.

(d) The certified local health agency shall require as a condition of the certification that all nonoperating wells on the property have been sealed in accordance with N.J.A.C. 7:9-9. The certified local health agency shall confirm that any deviation from the standards in N.J.A.C. 7:9-9 was approved by the Department in accordance with N.J.A.C. 7:9-9.1(a).

(e) The certified local health agency shall not certify a noncommunity water system if the State well record does not conform with the results of the inspection performed under (c) above and with all permit conditions. The certified local health agency shall bring to the Department's attention any deviations from permit conditions.

(f) The certified local health agency shall include in its certification for every new, altered or replacement noncommunity water system verification that the requirements in this section have been met.

7:1H-7.10 Inventory of public non-community water systems

(a) Each year, the Department shall provide the certified local health agency with an inventory report of all public non-community water systems. The certified local health agency shall review the inventory report to confirm the accuracy of the information regarding owners and tenants and operational status. Within 60 days after receiving the inventory report from the department, the certified local health agency shall return the report to the Department with all corrections, additions and deletions necessary to make the report accurate.

(b) The certified local health agency shall return the inventory report to:

Bureau of Safe Drinking Water
Department of Environmental Protection
Attention: Noncommunity Coordinator
401 East State Street
CN 426
Trenton, New Jersey 08625

7:1H-7.11 Noncommunity water supply inspections

(a) The certified local health agency shall inspect all nontransient noncommunity public water systems at least every two years. The certified local health agency shall inspect all transient noncommunity public water systems at least every four years.

(b) In complying with (a) above, each year the certified local health agency shall inspect at least 50 percent of all nontransient noncommunity public water systems and at least 25 percent of all transient noncommunity public water systems within its geographic jurisdiction.

(c) The certified local health agency shall conduct inspections of noncommunity public water systems. In the inspection, the certified local health agency shall:

1. Verify the information that the Department has provided from its records regarding the system;

2. Correct any inaccurate information; and

3. Complete any missing information.

(d) The certified local health agency shall prepare an inspection report containing the information verified, corrected or completed pursuant to (c) above.

(e) The certified local health agency shall submit to the Department a copy of the inspection report prepared under (d) above, within the time specified in the grant agreement executed under N.J.A.C. 7:1H-20.

(f) Each quarter, the Department shall provide the certified local health agency with a list of all noncommunity water systems identified as significant noncompliers. The certified local health agency shall inspect the systems included in the list, and determine whether each system has attained compliance. Within 60 days after receiving the list, the certified local health agency shall:

1. Advise the Department in writing whether each system included in the list has attained compliance; and

2. Commence enforcement action against the owner or operator of each system that has not attained compliance to compel compliance and collect penalties.

(g) If a certified local health agencies operates a laboratory certified under N.J.A.C. 7:18, and performs compliance analysis for a public water supply system, the certified local health agency shall report the results of such analyses to Department on a reporting form approved or provided by the Department.

7:1H-7.12 Assistance to the Department in conducting a noncommunity water supply program

(a) Upon the Department's request, the certified local health agency shall advise consumers served by public water systems of emergency notices issued by the Department (for example, notice of the need to boil water before potable use).

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(b) The Department may request that the certified local health agency assist in gaining compliance with a ban on service connections to a noncommunity water supply. The certified local health agency shall provide the following types of assistance upon the Department's request:

1. Commencing actions in a court of competent jurisdiction to prevent new service connections in violation of the ban;

2. Taking enforcement action against persons who violate the ban;

3. Performing inspections and investigations to support an enforcement action by the Department; and

4. Refraining from issuing approvals upon which a certificate of occupance could be based.

7:1H-7.13 Performance standards for a physical connection program

(a) A certified local health agency conducting a physical connection program shall comply with the requirements of N.J.A.C. 7:1H-7.14 through 7.16.

(b) In addition to complying with the requirements of N.J.A.C. 7:1H-7.4, upon the Department's request the certified local health agency shall take enforcement action to order a physical connection to be severed if:

1. A permit issued under N.J.A.C. 7:10-10.5 for a physical connection installation expires without renewal; or

2. A person directed by the Department to obtain a permit under N.J.A.C. 7:10-10.5 does not do so within the time specified by the Department.

7:1H-7.14 Inspection of premises with a physical connection device

(a) At least once each calendar quarter, the certified local health agency shall inspect all premises served by both an unapproved water supply and an approved public potable water supply to determine whether the premises are in compliance with the requirements described in this section.

(b) The certified local health agency shall inspect premises served by a public community water system and an unapproved water supply. The certified local health agency shall determine whether:

1. Any physical connection exists between the public community water system and the unapproved water supply; and

2. Whether the physical connection includes an Approved Physical Connection Installation or is not required to include such an installation pursuant to N.J.A.C. 7:10-10.2.

(c) If there is a physical connection at the premises, and the physical connection does not include an Approved Physical Connection Installation, the certified local health agency shall take enforcement action either to have the physical connection removed or to have an Approved Physical Connection Installation installed.

(d) The certified local health agency shall:

1. Observe pressure tests and internal inspections of physical connection installations performed under N.J.A.C. 7:10-10.5(a)3 and 10.6;

2. Determine whether such tests and inspections are performed in accordance with N.J.A.C. 7:10-10.6; and

3. Advise the Department in writing whether the tests and inspections have been performed in accordance with N.J.A.C. 7:10-10.6, and state the results of the tests and inspections.

(e) The certified local health agency, in conjunction with the water purveyor, shall inspect and test physical connection installations pursuant to N.J.A.C. 7:10-10.5(a)5.

(f) The certified local health agency shall review permit applications submitted under N.J.A.C. 7:10-10.5 for any new physical connection installation or alteration to an existing installation, and determine whether the application qualifies for approval. The certified local health agency shall advise the owner of the physical connection installation to submit the application to the Bureau of Safe Drinking Water.

(g) Any special investigations into the need for a physical connection shall be conducted by the certified local health agency.

7:1H-7.15 Notification of compliance and/or noncompliance; follow-up inspections

(a) Immediately following an inspection or test performed under N.J.A.C. 7:1H-7.15, the certified local health agency shall verbally advise the owner of the physical connection regarding any noncompliance identified during the inspection or test. Within 10 working days after the inspection or test, the certified local health agency shall send the owner written notification of compliance and/or noncompliance, a copy of the inspection form completed by the certified local health agency, and a direction to remedy any noncompliance within a specified time.

(b) Promptly after the owner of the physical connection advises the certified local health agency that it has remedied the noncompliance described under (a) above, the certified local health agency shall conduct a follow-up inspection. If the owner of the physical connection does not respond to the certified local health agency within the time allotted under (a) above to remedy noncompliance, the certified local health agency shall conduct a follow-up inspection promptly after the expiration of that allotted time. The requirement for a follow-up inspection applies only to the following types of noncompliance:

1. Failure of the physical connection installation to meet the requirements of N.J.A.C. 10.6 for tightness under prevailing pressure conditions;

2. The presence of an unprotected bypass or a service line deficiency; and

3. The presence of an unapproved physical connection installation.

(c) The follow-up inspection shall include the following:

1. If the physical connection installation did not meet the requirements of N.J.A.C. 10.6 for tightness under prevailing pressure conditions, the certified local health agency shall perform another pressure test;

2. If the internal inspection shows an unprotected bypass or a service line deficiency, the certified local health agency shall confirm either:

i. That the bypass or service line has been severed; or

ii. That the owner of the physical connection has applied to the Department for a permit under N.J.A.C. 7:10-10.5 for a physical connection installation; and

3. If the physical connection is served by an unapproved physical connection installation, the certified local health agency shall confirm either:

i. That the physical connection has been severed; or

ii. That the owner of the physical connection has applied to the Department for a permit under N.J.A.C. 7:10-10.5 for a physical connection installation.

(d) The certified local health agency shall seek injunctive relief under N.J.S.A. 58:11-9.11 to require noncompliance to be remedied, and may commence an action for penalties under N.J.S.A. 58:11-9.9, if:

1. The follow-up inspection confirms the noncompliance; and

2. The owner of the physical connection has not executed an agreement providing for the noncompliance to be remedied within a specified time.

(e) If the inspection or test shows noncompliance other than those listed in (b) above, the certified local health agency may, in its discretion, conduct a follow-up inspection.

7:1H-7.16 Recordkeeping

(a) The certified local health agency shall retain all records that it makes or receives in connection with its activities under this subchapter.

1. The certified local health agency shall retain in perpetuity all records pertaining to certifications of water systems issued or denied by the certified local health agency.

2. The certified local health agency shall retain or assure the retention of records related to physical connections until no approved physical connection installation is required.

3. The certified local health agency shall retain all records other than those described in (a)1 or 2 above for at least ten years after the agency first makes or receives the record.

(b) Without limiting the generality of (a) above, examples of the records to be retained include the following:

1. Records of formal and informal enforcement actions;

2. Records of sampling and of analysis of samples;

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3. Inspection reports; and
4. Records related to the approval or denial of any certification.
(c) The certified local health agency shall make its records available for the Department's review during regular working hours.

7:1H-7.17 Monthly reports
(a) In addition to the information required under N.J.A.C. 7:1H-4.2, the certified local health agency shall include the following information in its monthly report:
1. For each well certification issued or denied, a summary prepared on a form supplied or approved by the Department, including the following information:
i. The Department well permit number;
ii. The date on which the certified local health agency issued or denied the certification;
iii. The name and mailing address of the owner of the well; and
iv. The location of the well, including the street address, tax lot and block, and latitude and longitude;
2. For each certification issued or denied for a public non-community water system, a summary prepared on a form supplied or approved by the Department, including the following information:
i. The Department well permit number, if applicable;
ii. The date on which the certified local health agency issued or denied the certification;
iii. The name and mailing address of the owner of the water system; and
iv. The Public Water System identification number; and
3. For each enforcement action that has not been concluded before the report date, a summary prepared on a form supplied or approved by the Department, including the following information in addition to the information required under N.J.A.C. 7:1H-4.2(b):
i. The name and mailing address of the owner of the well;
ii. The location of the well, including the street address, tax lot and block, and latitude and longitude.
iii. The name and license number of the well driller;
iv. The Department well permit number; and
v. The Public Water System identification number, if any.

SUBCHAPTER 8. ENVIRONMENTAL HEALTH PERFORMANCE STANDARDS FOR AN AMBIENT SURFACE WATER QUALITY MONITORING PROGRAM

7:1H-8.1 General performance standards for administering an ambient surface water quality monitoring program
(a) A certified local health agency may conduct an ambient surface water quality monitoring program, to the extent authorized in its certification.
(b) A certified local health agency conducting an ambient surface water quality monitoring program shall do so in accordance with the following:
1. The Water Quality Management Act, N.J.S.A. 58:11-7;
2. The performance standards of general applicability set forth in N.J.A.C. 7:1H-4; and
3. The standards set forth in this subchapter.

7:1H-8.2 Performance standards for conducting an ambient surface water quality monitoring program
(a) A certified local health agency shall conduct an ambient surface water quality monitoring program designed to supplement the data collected in the water quality management planning process, the primary monitoring network, and other Department monitoring activities. The certified local health agency shall conduct special survey of stream segments, lake and estuaries in accordance with the following:
1. The priority list established annually by the Department;
2. Quality assurance standards set forth in (b) below;
3. Sample collection and field measurements standards set forth in (c) below;
4. Laboratory analysis standards set forth in (d) below; and
5. Data management standards set forth in (e) below.
(b) The certified local health agency shall conduct its ambient surface water quality monitoring program in accordance with the following quality assurance standards:
1. All survey, monitoring and research projects must have written, predefined levels of data quality, sufficient to meet the project's objectives and approved in advance by the Department. The certified local health agency shall submit the data quality plan with the annual grant application for Department approval;
2. The certified local health agency shall establish a set of Standard Operating Procedures and specific Quality Assurance Project Plans for all data gathering, generation, review and use processes. The certified local health agency shall submit the Standard Operating Procedures and Quality Assurance Project Plans with the annual grant application for Department approval;
3. The certified local health agency shall establish routine data validation procedures for determining whether the sample results meet the Quality Assurance Project Plan data quality objectives. The certified local health agency shall submit the validation procedures with the annual grant application for Department approval;
4. The certified local health agency shall cooperate fully with any audit conducted by the Department or representative of the Department to assess the certified local health agency's environmental data-gathering and decision-making processes; and
5. The certified local health agency shall perform all quality assurance functions related to the generation of environmental data in accordance with the procedures taught in training required under N.J.A.C. 7:1H-8.3(b).
(c) The certified local health agency shall adhere to the procedures taught in training required under N.J.A.C. 7:1H-8.3(a) in making field measurements and in collecting, preserving and transporting samples to the laboratory.
(d) The certified local health agency shall use a laboratory certified by the Department pursuant to N.J.A.C. 7:18 for the method necessary to identify and quantify the parameter of concern.
(e) The certified local health agency shall conduct an ambient surface water quality monitoring program in accordance with the following data management standards:
1. The certified local health agency may use the Federal Environmental Protection Agency Storage and Retrieval System (STORET) as the database for all raw water quality samples analyzed by the certified local health agency;
2. The certified local health agency shall be responsible for establishing the necessary mechanisms and ensuring that all data for their programs are entered into the appropriate databases; and
3. If the certified local health agency does not use the database described in (e)1 above, the certified local health agency shall submit the data to the Department in a format approved by the Department.

7:1H-8.3 Training
(a) The certified local health agency's personnel administering the ambient surface water quality monitoring program shall annually attend training seminars sponsored by the Department regarding proper procedures for making field measurements and for collecting, preserving and transporting samples to the laboratory.
(b) The certified local health agency personnel that perform quality assurance functions related to the generation of environmental data shall annually obtain practical quality assurance training approved by the Department as sufficient to serve the purposes of this subchapter.

SUBCHAPTER 9. ENVIRONMENTAL HEALTH PERFORMANCE STANDARDS FOR A WELL HEAD PROTECTION PROGRAM

7:1H-9.1 General performance standards for participating in the Well Head Protection Program
(a) A certified local health agency may participate in the Department's Well Head Protection Program, to the extent authorized in the certification.
(b) A certified local health agency participating in the Well Head Protection Program shall do so in accordance with the following:
1. The Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq. and the rules promulgated thereto, N.J.A.C. 7:10;

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2. The Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. and the rules promulgated by the department thereto, especially N.J.A.C. 7:9-6;

3. The performance standards of general applicability set forth in N.J.A.C. 7:1H-4; and

4. The standards set forth in this subchapter.

(c) A term used in this subchapter, not defined in N.J.A.C. 7:1H-1.4, and defined in N.J.A.C. 7:9-6.4 or 7:10-1.3, 10.1 or 12.4, shall have the meaning set forth in N.J.A.C. 7:9-6.4, 7:10-1.3, 10.1 or 12.4.

(d) The certified local health agency shall maintain databases of the information it collects regarding public water supply wells and well head protection areas. The certified local health agency shall maintain the databases in a form that is compatible with the Department's computer system.

7:1H-9.2 Performance standards for locating public water supply wells for the Well Head Protection Program

(a) The certified local health agency shall determine the location of all wells within its geographic jurisdiction that supply water to public non-community water systems.

(b) The certified local health agency may determine the location of wells within its geographic jurisdiction that supply water to public community water supply wells.

(c) For each public water supply well located, the certified local health agency shall submit to the Department the following data on a Department Well Head Protection data entry form or in an electronic form compatible with the Department's computer system:

1. The name, address and telephone number of the well owner;

2. The depth of the well;

3. The pumping capacity of the well;

4. The following permit information:

i. The state well permit number;

ii. The Water Allocation permit number;

iii. The Public Water System identification number; and

iv. The water use registration number; and

5. The location of the well, with an accuracy of plus or minus 50 feet in any direction from the true ground location reported in latitude and longitude, to the tenth of one second, in State plane feet and identified on a paper copy of an aerial orthophoto quarter quadrangle at a scale of 1:12,000 (or on a map approved by the Department as being at least as accurate).

(d) The certified local health agency shall submit to the Department a United States Geological Survey topographic map at a scale of 1:24,000, identifying the well location. As applicable, this map shall also include the well's static water level elevations, hydrologic or topographic boundaries and other public wells in the area.

(d) All wells shall be located using a Global Positioning System (GPS) or by a licensed New Jersey land surveyor.

7:1H-9.3 Delineation of public noncommunity well head protection areas

(a) If the certified local health agency is authorized to operate a Geographic Information System (GIS) under N.J.A.C. 7:1H-18, it shall delineate well head protection areas for the wells within its jurisdiction serving public non-community water systems.

(b) The certified local health agency shall not delineate well head protection areas for public community water supply wells.

(c) The certified local health agency shall perform all well head protection area delineations in accordance with department procedures outlined in the Department's well head protection regulations at N.J.A.C. 7:9-6.5(g). (Agency Note: N.J.A.C. 7:9-6.5(g) has not yet been promulgated, but is expected to be promulgated before this chapter becomes operative.)

(d) The certified local health agency shall prepare and maintain mapped descriptions of the well head protection area delineated for any well. The descriptions shall be maintained on one of the following:

1. The certified local health agency's Geographic Information System, if the certified local health agency has such a system; or

2. Paper copies of aerial orthophoto quarter quadrangles mapped at a scale of 1:12,000 (or an alternative map approved by the Department as being at least as accurate), with an accuracy of plus or minus 50 feet in any direction from the true ground location reported in latitude and longitude, to the tenth of one second, in State plane feet.

(e) The certified local health agency shall provide the Department with the mapped descriptions described in (d) above.

7:1H-9.4 Identification of pollutant sources

Upon the Department's request, the certified local health agency shall determine the location of pollutant sources within all well head protection areas in its geographic jurisdiction. The certified local health agency shall locate the pollutant sources on aerial orthophoto quarter quadrangles mapped at a scale of 1:12,000 (or an alternative map approved by the Department as being at least as accurate), with an accuracy of plus or minus 50 feet in any direction from the true ground location reported in latitude and longitude, to the tenth of one second, in State plane feet.

SUBCHAPTER 10. ENVIRONMENTAL HEALTH PERFORMANCE STANDARDS FOR AN ON-SITE SEWAGE DISPOSAL SYSTEMS PROGRAM

7:1H-10.1 General performance standards for administering an on-site sewage disposal systems program

(a) A certified local health agency shall administer an on-site disposal system program to the extent authorized by its certification.

(b) A certified local health agency conducting an on-site sewage disposal system program shall do so throughout its entire geographic jurisdiction in accordance with the following:

1. The Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the rules promulgated pursuant thereto, specifically N.J.A.C. 7:9A-1 et seq.;

2. The Realty Improvement Sewerage and Facilities Act, N.J.S.A. 58:11-23 et seq.;

3. The performance standards set forth in this subchapter; and

4. The performance standards of general applicability set forth in N.J.A.C. 7:1H-4.

(c) A term used in this subchapter, not defined in N.J.A.C. 7:1H-1.4, and defined in N.J.A.C. 7:9-2.1, shall have the meaning set forth in N.J.A.C. 7:9-2.1

(d) The certified local health agency shall perform the following activities in administrating an on-site sewage disposal system program:

1. Issue approvals, permits or certifications for the installation, construction or repair of on-site sewage disposal systems that are in compliance with N.J.A.C. 7:9A;

2. Review certificates and permits issued by local boards of health for newly constructed, altered, repaired or abandoned individual subsurface disposal systems for compliance with N.J.A.C. 7:9A;

3. Investigate nuisances and public health hazards caused by malfunctioning residential, commercial and industrial individual subsurface sewage disposal systems;

4. Conduct a sanitary survey, including physical inspections and field testing such as geophysics or dye testing;

5. Based on the sanitary survey conducted under (d)4 above, identify areas that may be unsuitable for the use of on-site sewage disposal systems, and accumulate evidence to determine whether there is a need for a public sewage collection system or for an individual subsurface sewage disposal system management program;

6. Notify property owners of proper operation and maintenance practices as required by N.J.A.C. 7:9A-3.14; and

7. For any system or component of a system that has been abandoned, verify that the abandonment was in accordance with the requirements of N.J.A.C. 7:9A-12.8.

7:1H-10.2 Compliance and enforcement

(a) The certified local health agency shall conduct field inspections to evaluate compliance with N.J.A.C. 7:9A, N.J.S.A. 58:11-23 et seq. and N.J.S.A. 58:10A-1 et seq.

(b) When the certified local health agency learns of violations of the requirements listed in (a) above, associated with an owner of an on-site subsurface sewage disposal system or the local board of

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health responsible for certifying an individual subsurface sewage disposal systems, the certified local health agency shall require corrective measures and take appropriate enforcement action in accordance with N.J.S.A. 58:10A-10(c).

(c) Within 30 days after the certified local health agency discovers each violation, the certified local health agency shall issue a Notice of Noncompliance to the alleged violator and provide the Department with a copy. In the Notice of Noncompliance, the certified local health agency shall include the information required under N.J.A.C. 7:1H-4.10. If the alleged violator does not attain compliance within the time allotted in the Notice of Noncompliance, or execute a written agreement with the Department or the certified local health agency within 30 days after the issuance of the Notice of Noncompliance to achieve compliance, the certified local health agency shall initiate formal enforcement action in accordance with N.J.S.A. 58:10A-10(c). The certified local health agency shall forward to the Department a copy of the formal enforcement action within 60 days after the issuance date of the Notice of Noncompliance.

(d) If an individual subsurface sewage disposal system was installed without an approval, the certified agency shall issue a violation against the installer pursuant to N.J.A.C. 7:9A-1.7.

(e) If the certified local health agency finds that an on-site sewage disposal system has malfunctioned due to improper construction or design, the certified local health agency shall take enforcement action against the on-site sewage disposal system owner and/or the agency that issued the certification or approval pursuant to N.J.S.A. 58:10A-10(c).

7:1H-10.3 Septage Management District provision

(a) If the certified local health agency is part of a septage management district, to the extent authorized by law it shall perform the following or provide for the following to be performed in cooperation with any other designated on-site sewage management agency:

1. Inspection of the maintenance and operation of on-site sewage disposal systems;

2. Bacteriological testing of water from selected individual or nonpublic potable water wells serving realty improvements that are also served by such systems;

3. The repair of such systems when inspections indicate that repair is necessary to prevent or abate a violation of N.J.A.C. 7:9A-2.1; and

4. Control of the health aspects of the activity of removing and transporting sewage from such systems to treatment or disposal sites approved by the Department.

7:1H-10.4 Reporting requirements

(a) In addition to the information required under N.J.A.C. 7:1H-4.2, the certified local health agency shall include in its monthly reports the information required in this section.

(b) For each certification approved or denied by the certified local health agency in conjunction with a Treatment Works Approval ("TWA") issued by the Department under N.J.A.C. 7:9A-3.9, the certified local health agency shall include the following information in the monthly report:

1. The Department's TWA permit number;

2. The date on which the certified local health agency approved or denied the certification;

3. The name of the owner of the property in question; and

4. For each certification that was denied, an explanation of the specific reasons for denial.

7:1H-10.5 Recordkeeping

(a) The certified local agency shall maintain in perpetuity all files of all plans together with certificates and permits issued by the agency and records pertaining to enforcement actions taken concerning residential, commercial and industrial individual subsurface sewage disposal systems.

(b) The certified local health agency shall make the files available to the Department for inspection and copying during regular working hours.

SUBCHAPTER 11. ENVIRONMENTAL HEALTH PERFORMANCE STANDARDS FOR A NOISE CONTROL PROGRAM

7:1H-11.1 General performance standards for administering a noise control program

(a) A certified local health agency may administer a noise control program, to the extent authorized in its certification.

(b) A certified local health agency conducting a noise control program shall do so throughout its entire geographic jurisdiction in accordance with the following:

1. The Noise Control Act of 1971, N.J.S.A. 13:1G-1 through 23;

2. The rules promulgated by the Department under the authority of the Noise Control Act of 1971, N.J.A.C. 7:29 and 7:29B;

3. The performance standards of general applicability set forth in N.J.A.C. 7:1H-4;

4. The standards set forth in (d) through (f) below; and

5. The standards in N.J.A.C. 7:1H-13.2 below.

(c) A term used in this subchapter, not defined in N.J.A.C. 7:1H-1.4, and defined in N.J.A.C. 7:29-1.1, shall have the meaning set forth in N.J.A.C. 7:29-1.1. A term used in this subchapter, not defined in N.J.A.C. 7:1H-1.4 or 7:29-1.1, and defined in N.J.A.C. 7:29B-1.1, shall have the meaning set forth in N.J.A.C. 7:29B-1.1.

(d) The certified local health agency shall investigate and document allegations of violations of the Noise Control Act of 1971 or of the rules and regulations promulgated thereunder, which allegations are brought to the attention of the agency by the Department, by citizen complaints, or by other sources. Within five working days after receiving notice of the suspected activity (or such shorter period as the Department specifies when it refers a specific allegation to the certified local health agency), the certified local health agency shall investigate the alleged violation at the location where it is occurring or has occurred.

(e) A person may perform inspections or investigations on behalf of the certified local health agency only after:

1. Completing the training courses required under N.J.A.C. 7:29B-1.11, and completing such courses again at least every two years; or

2. Obtaining education, experience, or a combination of both that the Department determines is equivalent to the training courses required under N.J.A.C. 7:29B-1.11.

(f) To the extent authorized under its certification, the certified local health agency shall enforce the limitations set forth in N.J.A.C. 7:1H-11.2(a)1 and 2. The certified local health agency shall identify violators and initiate appropriate enforcement actions. The certification outlines the types of enforcement action which the certified local health agency is authorized to undertake itself, without consulting the Department, and the types of enforcement action which the certified local health agency may undertake itself, after consulting with the department on the specific enforcement case and receiving the department's approval.

7:1H-11.2 Performance standards for noise control

(a) A certified local health agency administering a noise control program shall determine whether:

1. Sound from any industrial facility, commercial facility, public service facility or community service facility complies with the applicable sound level limitations under N.J.A.C. 7:29-1.2; and

2. Testing of any stationary emergency signaling devices is conducted in compliance with the limitations on time, duration and frequency set forth in N.J.A.C. 7:29-1.3.

(b) The certified local health agency shall conduct all tests in accordance with N.J.A.C. 7:29B.

(c) The certified local health agency shall obtain or have available to it equipment satisfying the requirements of N.J.A.C. 7:29B-1.6.

(d) The certified local health agency shall have its sound level meter recertified and its calibrator recalibrated as frequently as required under N.J.A.C. 7:29B-1.5. The certified local health agency shall provide the Department with certificates evidencing such recertification and recalibration upon the Department's request.

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7:1H-11.3 Reporting

(a) In the report submitted under N.J.A.C. 7:1H-4.2, the certified local health agency shall provide all information described in that section, in addition to the following:

1. The number of enforcement actions that the certified local health agency commenced in courts of competent jurisdiction;

2. The total amount of penalties collected in actions in courts of competent jurisdiction;

3. The number of violations referred to the Department;

4. The total amount of penalties assessed by the Department based on referrals from the certified local health agency;

5. The number of local enforcement conferences held; and

6. The number of complaints received with respect to each of the following sources:

i. Aircraft;
ii. Animals;
iii. Appliances;
iv. Automobiles;
v. Construction activities;
vi. Residential dwellings;
vii. Landscaping activities;
viii. Railroad trains;
ix. Sirens;
x. Trucks;
xi. Utilities; and
xii. Other.

SUBCHAPTER 12. ENVIRONMENTAL HEALTH PERFORMANCE STANDARDS FOR A SITE REMEDIATION PROGRAM

7:1H-12.1 General performance standards for administering a site remediation program

(a) A certified local health agency may administer a site remediation program, to the extent authorized in its certification.

(b) A certified local health agency conducting a site remediation program shall do so throughout its entire geographic jurisdiction in accordance with the following:

1. The Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.;

2. The Industrial Site Recovery Act, N.J.S.A. 13:1K-6 through 13;

3. The fish and game laws of the State, including N.J.S.A. 13:1B-23 et seq., 13:1B-29 et seq., 23:1-1 et seq., and 50:1-1 et seq.;

4. The Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 through 32;

5. The Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.;

6. The Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 through 37, and the Federal regulations at 40 CFR 280;

7. The Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.;

8. The Technical Requirements for Site Remediation, N.J.A.C. 7:26E;

9. The other rules promulgated by the Department under the authority of the statutes listed in (b)1 through 7 above, including without limitation N.J.A.C. 7:1E, 7:14B, 7:25, 7:26B, 7:26C and 7:31;

10. The performance standards of general applicability set forth in N.J.A.C. 7:1H-4; and

11. The standards set forth elsewhere in this subchapter.

(c) A term used in this subchapter, not defined in N.J.A.C. 7:1H-1.4, and defined in any of the rules listed in (b)8 or 9 above, shall have the meaning set forth in such rules. If the term is defined in more than one of the rules listed in (b)8 or 9 above, the term shall have the meaning most specifically applicable in the relevant context.

(d) No provision of this subchapter shall be construed to impose any duty upon a certified local health agency administering an emergency response program, or to grant any authority to such a certified local health agency, unless the duty or authority concerns either:

1. A contaminated site within the certified local health agency's jurisdiction; or

2. Any of the following which affects or threatens to affect the geographic jurisdiction of the certified local health agency:

i. A discharge;
ii. A threatened discharge;
iii. A suspected discharge or suspected threatened discharge; or
iv. Other circumstances which pose a substantial risk of imminent damage to public health or safety or imminent and severe damage to the environment.

7:1H-12.2 Monitoring remediation of contaminated site

(a) Upon the Department's written request, the certified local health agency shall monitor one or more aspects of the remediation of a specified contaminated site and determine whether the person conducting the remediation is doing so in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. In its request the Department shall specify the aspects to be monitored, which may include any or all of the following, or any part of any of the following:

1. A preliminary assessment to identify the presence of any potentially contaminated areas of concern, pursuant to N.J.A.C. 7:26E-3.1;

2. A site investigation to determine if any contaminants are present at the site above any of the applicable remediation standards, pursuant to N.J.A.C. 7:26E-3.3 through 3.9;

3. A remedial investigation, pursuant to N.J.A.C. 7:26E-4.1 through 4.6; and

4. Remedial action, pursuant to N.J.A.C. 7:26E-6.

(b) The certified local health agency shall report to the Department in writing each calendar quarter the results of the monitoring required under (a) above, unless the Department specifies a different reporting frequency for a particular site due to circumstances specific to that site.

(c) Upon the Department's written request, the certified local health agency shall review one or more of the following documents:

1. A preliminary assessment report required under N.J.A.C. 7:26E-3.2;

2. A site investigation report required under N.J.A.C. 7:26E-3.10;

3. A remedial investigation workplan required under N.J.A.C. 7:26E-4.8;

4. A remedial investigation report required under N.J.A.C. 7:26E-4.9;

5. A remedial action workplan required under N.J.A.C. 7:26E-6.2;

6. A remedial action progress report submitted under N.J.A.C. 7:26E-6.5(b); or

7. A remedial action report required under N.J.A.C. 7:26E-6.6.

(d) In reviewing a document under (c) above, the certified local health agency shall:

1. Determine whether the document satisfies the applicable provisions of the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and report the results of that determination to the Department in writing; and

2. If the Department requests, verify specific items of information identified by the Department, and report the results of the verification to the Department in writing.

(e) In monitoring the conduct of an activity listed in (a) above, or in verifying a document listed in (c) above, the certified local health agency shall take those of the actions listed below that are reasonably necessary to perform such monitoring or verification (provided however, that in every case the certified local health agency shall take the actions described in (e)9 below):

1. Visually inspect and photograph the site that is the subject of the activity or document;

2. Observe the activities being performed at the site;

3. Inspect and photograph equipment, processes, buildings and appurtenances;

4. If specifically requested by the Department, collect samples of air, soil, ground water, surface water, wetlands and sediment, in accordance with the requirements of N.J.A.C. 7:26E;

5. Copy records;

6. Interview persons engaged in the activity, and other persons with knowledge of how the activity is being conducted;

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7. Monitor receptors to determine whether they are exposed to contaminants during the time the activity is occurring, and the extent of the exposure;

8. Determine whether the person conducting the activity has obtained all required Federal, State and local permits, permit modifications or certifications required for the activity; and

9. Maintain written inspection reports and documentation evidencing the actions that the certified local health agency has taken under (e)1 through 8 above.

7:1H-12.3 Conducting remediation of contaminated sites

Upon written agreement between the Department and the certified local health agency, the certified local health agency shall conduct one or more aspects of the remediation of a particular site in accordance with the agreement. The certified local health agency shall perform the agreed-upon activity in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

7:1H-12.4 Training and medical surveillance

(a) Each person performing site remediation activities for the certified local health agency shall obtain the following training:

1. The initial training required under 29 CFR 1910.120(e)(3)(i);

2. The annual refresher training required under 29 CFR 1910.120(e)(8); and

3. Such other training that the Department makes available, including opportunities to accompany Department personnel on site inspections and workshops for review and discussion of existing and future regulations governing site remediation.

(b) Each full-time and part-time staff member engaged in site remediation that includes emergency response activities shall obtain the following training in addition to the training required under (a) above:

1. The initial training required under 29 CFR 1910.120(g)(3)(i);

2. The annual refresher training required under 29 CFR 1910.120(g)(8);

3. The training for the first responder awareness level described in 29 CFR 1910.120(q)(6)(i);

4. The training for the first responder operations level described in 29 CFR 1910.120(q)(6)(ii); and

5. The annual refresher training required under 29 CFR 1910.120(q)(8).

(c) The certified local health agency shall have at least one full-time staff member trained as an on-scene incident commander as provided under 29 CFR 1910.120(q)(6)(v). The certified local health agency may satisfy this requirement by having a sufficient number of part-time staff members so that at least one staff member with such training is available at all times.

(d) The certified local health agency shall have at least one full-time staff member trained as a hazardous materials technician as provided under 29 CFR 1910.120(q)(6)(iii). The certified local health agency may satisfy this requirement by having a sufficient number of part-time staff members so that at least one staff member with such training is available at all times. By (date that is 18 months after the operative date of this chapter), all staff members performing emergency response activities shall have completed such training. All staff members newly hired by the certified local health agency for work on emergency response activities shall receive such training within one year after their employment commences.

(e) All staff members involved in emergency response activities shall participate in such emergency response training as the Department makes available to them.

(f) The training required under (a) through (e) above is in addition to any training required under N.J.A.C. 7:1H-4.5.

(g) Each person performing site remediation activities for the certified local health agency shall be subjected to medical surveillance required under 29 CFR 1910.120(f).

7:1H-12.5 Staffing of emergency response program

(a) For purposes of this section and N.J.A.C. 7:1H-12.6, the following counties are Category I counties:

1. Bergen;
2. Camden;
3. Essex;
4. Gloucester;
5. Hudson;
6. Mercer;
7. Middlesex;
8. Morris;
9. Passaic; and
10. Union.

(b) For purposes of this section and N.J.A.C. 7:1H-12.6, the following counties are Category II counties:

1. Atlantic;
2. Cape May;
3. Monmouth; and
4. Ocean.

(c) For purposes of this section and N.J.A.C. 7:1H-12.6, the following counties are Category III counties:

1. Burlington;
2. Cumberland;
3. Hunterdon;
4. Salem;
5. Somerset;
6. Sussex; and
7. Warren.

(d) A certified local health agency located in a Category I county shall employ at least the following staff:

1. Four full-time staff members performing only duties which concern emergency response activities; and

2. Four part-time staff members available to perform such duties when necessary to supplement the full-time staff members.

(e) A certified local health agency located in a Category II county shall employ at least the following staff:

1. From the Friday preceding Memorial Day (observed) until the Friday following Labor Day, four full-time staff members performing only duties which are authorized or required under this subchapter, and two part-time staff available to perform such duties when necessary to supplement the full-time staff members; and

2. At all other times, two full-time staff members performing only duties which are authorized or required under this subchapter, and four part-time staff available to perform such duties when necessary to supplement the full-time staff members.

(f) A certified local health agency located in a Category III county shall employ at least the following staff:

1. Two full-time staff members performing only duties which are authorized or required under this subchapter; and

2. Two part-time staff available to perform such duties when necessary to supplement the full-time staff members.

(g) A certified local health agency may satisfy a requirement under this section for a specified number of full-time employees by using any combination of employees (including full-time employees, part-time employees and employees with other job responsibilities) that yield an equivalent amount of staff time devoted to emergency response activities.

7:1H-12.6 Equipment

(a) A certified local health agency located in a Category 1 county shall have the following equipment:

1. One level B protection ensemble for each full-time staff member;

2. One portable photo-ionization detector or flame ionization detector for each full-time staff member;

3. For each full-time staff member, one colorimetric method air sampling device for measuring the presence and concentration of air contaminants;

4. One vehicle for each full-time staff member (provided that the certified local health agency may use the vehicle for other governmental purposes in addition to the emergency response program), equipped with the items listed in (a)1, 3 and 4 above;

5. For each part-time staff member, one positive-pressure, full-facepiece self-contained breathing apparatus; and

6. Disposable protective clothing and equipment for the use of each part-time staff member.

(b) A certified local health agency located in a Category 2 county shall have the following equipment:

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1. One level B protection ensemble for each full-time staff member;

2. One portable photo-ionization detector or flame ionization detector for each full-time staff member;

3. For each full-time staff member, one colorimetric method air sampling device for measuring the presence and concentration of air contaminants;

4. One vehicle for each full-time staff member (provided that the certified local health agency may use the vehicle for other governmental purposes in addition to the emergency response program), equipped with the items listed in (b)1, 2 and 3 above;

5. For each part-time staff member, one positive-pressure, full-facepiece self-contained breathing apparatus; and

6. Disposable protective clothing and equipment for the use of each part-time staff member.

(c) A certified local health agency located in a Category 3 county shall have the following equipment:

1. One level B protection ensemble for each full-time staff member;

2. One portable photo-ionization detector for each full-time staff member;

3. For each full-time staff member, one colorimetric method air sampling device for measuring the presence and concentration of air contaminants;

4. One vehicle for each full-time staff member (provided that the certified local health agency may use the vehicle for other governmental purposes in addition to the emergency response program), equipped with the items listed in (c)1, 2 and 3 above;

5. For each part-time staff member, one positive-pressure, full-facepiece self-contained breathing apparatus; and

6. Disposable protective clothing and equipment for the use of each part-time staff member.

(d) For purposes of this section, "Level B protection ensemble" means all personal protective equipment listed in 29 CFR 1910.120, Appendix B, Part A(II).

7:1H-12.7 Assistance from and coordination with other agencies

(a) If the certified local health agency verifies that a discharge has occurred, the certified local health agency shall notify the Department of the discharge immediately.

(b) The certified local health agency shall coordinate with the Department in the local agency's conduct of any emergency response action.

(c) The certified local health agency shall contract with fire and police departments and other governmental agencies to obtain such assistance as is necessary to perform emergency response duties pursuant to this subchapter.

7:1H-12.8 Claims against New Jersey Spill Compensation Fund

Any claim by a certified local health agency against the New Jersey Spill Compensation Fund for damages incurred in connection with an emergency response action shall be governed by N.J.A.C. 7:1J-5 and any other applicable provisions of N.J.A.C. 7:1J.

7:1H-12.9 Underground storage tank requirements

(a) The certified local health agency shall investigate and document allegations of violations of the Underground Storage of Hazardous Substances Act or of N.J.A.C. 7:14B, which allegations are brought to the attention of the agency by the Department, by citizen complaints, or by other sources. Within 10 working days after receiving notice of the suspected activity, the certified local health agency shall inspect the location at which the alleged violation is occurring or has occurred; provided however that if the Department informs the certified local health agency that a circumstance may pose an imminent threat to public health, safety or the environment, the certified local health agency shall perform the inspection within one working day after receiving notice from the Department. If the Department determines that the circumstances of the allegation do not require a response within the time set forth above, the Department may allow the certified local health agency additional time to respond.

(b) To the extent authorized under its certification, the certified local health agency shall enforce the provisions of the Underground Storage of Hazardous Substances Act, N.J.A.C. 7:14B, and 40 CFR 280. The certified local health agency shall identify violators and initiate appropriate enforcement actions. The certification outlines the types of enforcement action which the certified local health agency is authorized to undertake itself, without consulting the Department, and the types of enforcement action which the certified local health agency may undertake itself, after consulting with the department on the specific enforcement case and receiving the department's approval.

(c) The Department shall provide the certified local health agency with a list of sites within the agency's geographic jurisdiction, at which one or more underground storage tanks registered with the Department pursuant to N.J.A.C. 7:14B-2 are located.

(d) The certified local health agency shall inspect the sites identified on the list provided under (c) above, and the facilities present at such sites. For all facilities present at each such site, the certified local health agency shall determine whether:

1. The owner or operator has registered each tank with the Department, as required by N.J.A.C. 7:14B-2.1;

2. All modifications to the information contained in the registration are reflected in an amendment to the registration, as required by N.J.A.C. 7:14B-2.5;

3. The owner or operator has prominently displayed the registration certificate in compliance with N.J.A.C. 7:14B-2.7;

4. Each underground storage tank system complies with the applicable performance standards, installation requirements and secondary containment requirements set forth at N.J.A.C. 7:14B-4.1 through 4.4 and 40 CFR 280;

5. Each existing underground storage tank system has complied with the applicable requirements for upgrading set forth at N.J.A.C. 7:14B-4.5 and 40 CFR 280;

6. Any release of a hazardous substance due to a spill or overfill has occurred in violation of N.J.A.C. 7:14B-5.1;

7. The owner or operator has properly maintained the records necessary to support the monthly inventory reconciliation required under N.J.A.C. 7:14B-5.4(a);

8. The owner or operator has maintained records of the weekly manual tank gauging required under N.J.A.C. 7:14B-5.4(b);

9. The release response plan for the site satisfies the requirements of N.J.A.C. 7:14B-5.5;

10. Each underground storage tank system at the site is equipped with a monitoring system to detect leaks and discharges if required under the schedule set forth at 40 CFR 280, and that the system satisfies all applicable requirements of N.J.A.C. 7:14B-6.1 through 6.5;

11. The records for each monitoring system satisfy the requirements of N.J.A.C. 7:14B-6.6;

12. Based on a review of inventory control and manual tank gauging records, and of an inspection of the site and all facilities, there is reason to believe that a suspected release has occurred and has not been confirmed or disproved pursuant to N.J.A.C. 7:14B-7.2 and 7.3;

13. No underground storage tank system has been replaced, installed, expanded or substantially modified before the owner or operator has obtained the permits required under N.J.A.C. 7:14B-10.1; and

14. If any underground storage tank system is being replaced, installed, expanded or substantially modified, the owner or operator is displaying a valid permit as required under N.J.A.C. 7:14B-10.7.

(e) The certified local health agency shall inspect property not included in the list provided under (c) above, at which the agency has reason to believe that an underground storage tank system is located. The certified local health agency shall determine whether an underground storage tank system is located at such property, and advise the Department of its determination. If an underground storage tank system is located at such property, the certified local health agency shall cause the owner or operator of the system to register it in accordance with N.J.A.C. 7:14B-2.

(f) The exclusion of a particular underground storage tank from regulation under N.J.A.C. 7:14B shall not be construed to limit the

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certified local health agency's authority or obligation under this subchapter to investigate and respond to discharges from such a tank.

7:1H-12.10 Initial incident investigation and reporting

(a) The certified local health agency shall notify the Department by telephone (at (609) 292-7172) immediately after becoming aware of any discharge of hazardous substances or hazardous wastes, or of any threatened discharge. In the notification, the certified local health agency shall provide the Department with all information required under N.J.A.C. 7:1E-5.3 that is available at the time of the notification.

(b) The certified local health agency shall provide the Department with the name and telephone number of the primary certified local health agency personnel to contact regarding any discharge or threatened discharge, and of any secondary persons to contact if the primary contact cannot be reached. If the Department notifies the certified local health agency of any discharge of hazardous substances or hazardous wastes, or of any threatened discharge, the Department shall direct the notice to the primary contact; provided however, that if the Department is unable to reach the primary contact immediately, the Department shall direct the notice to a secondary contact. Upon the Department's request, the certified local health agency shall investigate the discharge or threatened discharge in accordance with N.J.A.C. 7:1H-12.11, and provide the Department with all information required under N.J.A.C. 7:1E-5.3.

7:1H-12.11 Investigation of incidents referred by the Department

(a) Upon the Department's request, the certified local health agency shall investigate a discharge or threatened discharge of hazardous substances, hazardous wastes or other materials. The certified local health agency shall conduct the investigation in accordance with this section.

(b) If the Department determines that the discharge poses a substantial and imminent threat to public health, safety or the environment, the certified local health agency shall respond to the discharge in accordance with N.J.A.C. 7:1H-12.13.

(c) The certified local health agency shall determine the following:

1. The types and quantities of hazardous substances, hazardous wastes or other materials which have been discharged or which are threatened to be discharged;

2. The nature and extent of the likely impact of the discharge upon public health and safety, public and private property, and natural resources;

3. The most likely cause or causes of the discharge or threatened discharge;

4. The person or persons who may be in any way responsible for the discharge or threatened discharge, or for the material discharged or threatened to be discharged;

5. The remedial measures recommended by the certified local health agency; and

6. If the certified local health agency identifies any apparent violations of environmental health laws or regulations (in addition to violations related to the discharge), the certified local health agency shall advise the Department of such apparent violations.

(d) To determine the facts listed under (c) above, the certified local health agency shall take any of the following actions which are reasonably necessary to confirm such facts:

1. Visually inspect and photograph the contaminated site;

2. Inspect and photograph equipment, processes, buildings and appurtenances;

3. Collect samples of air, soil, sediments, surface water, ground water and hazardous waste;

4. Copy records; and

5. Interview persons reasonably likely to have knowledge relevant to confirming or disproving the facts listed under (c) above.

(e) The certified local health agency shall document its findings under (c) above.

(f) The certified local health agency shall conduct investigations under this section in a manner designed to ensure the health and safety of the public and of the persons conducting the investigation. The certified local health agency shall comply with all applicable health and safety laws and regulations.

(g) The certified local health agency shall perform all sampling in accordance with the requirements of N.J.A.C. 7:26E.

(h) If the Department requests, the certified local health agency shall coordinate its investigation with investigations conducted by State, Federal, county or local governmental authorities, or assist such authorities in the conduct of their investigations.

7:1H-12.12 Investigation report

(a) Within 10 working days after the discharge or threatened discharge described in N.J.A.C. 7:1H-12.10 or 12.11 occurs, the certified local health agency shall submit a report of its investigation to the Department on forms approved by the Department. The certified local health agency shall include in its report the information required under N.J.A.C. 7:1E-5.8, and describe the documentation and other evidence supporting the information set forth in the report.

7:1H-12.13 Incident response

(a) The certified local health agency shall take emergency action to respond to any discharge of hazardous substances or hazardous wastes, or to any threatened discharge, in the manner requested by the Department. The certified local health agency shall notify the Department before taking any such action. The Department may direct the certified local health agency to take the following action in response to the discharge:

1. Provide all support and assistance which the Department may reasonably request for its own action in responding to the discharge or threatened discharge;

2. Undertake to stop the discharge (or prevent the threatened discharge from becoming a discharge), and contain, mitigate, clean up and remove the hazardous substances or hazardous wastes discharged;

3. Monitor the response to the discharge or threatened discharge undertaken by a person responsible for the discharge, pursuant to the requirements of N.J.A.C. 7:1E-5.7; or

4. Take no action.

(b) In taking action under (a)2 or 3 above, the certified local health agency shall remain in contact with the Department as follows:

1. The certified local health agency shall telephone the Department within 15 minutes after arriving at the site of the discharge or threatened discharge, and provide the Department with all information required under N.J.A.C. 7:1E-5.3 that is available at the time of the telephone contact; and

2. The certified local health agency shall update the Department as additional information becomes available, and with specific information requested by the Department at the frequency that the Department requests.

(c) The certified local health agency shall record all information required to be reported under N.J.A.C. 7:1E-5.3 and 5.8.

(d) A certified local health agency responding to an incident involving one or more drums which appear to have been abandoned shall take the following actions:

1. Before traveling to the site, notify the Department by telephone at (609) 292-7172;

2. Determine the identity of the material in the drums;

3. If material is leaking from a drum, stop the leak without overpacking the drum;

4. Cordon off the area immediately surrounding the drums;

5. Update the Department as additional information becomes available, and with specific information requested by the Department at the frequency that the Department requests; and

6. Take such further action as the Department directs.

SUBCHAPTER 13. ENVIRONMENTAL HEALTH PERFORMANCE STANDARDS FOR A TOXIC CATASTROPHE PREVENTION ACT PROGRAM

7:1H-13.1 General performance standards for administering a Toxic Catastrophe Prevention Act program

(a) A certified local health agency may administer a Toxic Catastrophe Prevention Act (TCPA) program, to the extent authorized in its certification.

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(b) A certified local health agency conducting a TCPA program shall do so throughout its entire geographic jurisdiction in accordance with the following:

1. The Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 through 32, and the rules promulgated by the Department thereunder, N.J.A.C. 7:31;

2. The performance standards of general applicability set forth in N.J.A.C. 7:1H-4;

3. The standards set forth in (d) below; and

4. The standards applicable to the particular program areas set forth elsewhere in this subchapter.

(c) A term used in this subchapter, not defined in N.J.A.C. 7:1H-1.4 and defined in N.J.A.C. 7:31-1.5, shall have the meaning set forth in N.J.A.C. 7:31-1.5.

(d) If the certified local health agency learns of any alleged violation of the statute or rules listed in (b) above through citizen complaints or through other means, the certified local health agency shall refer the alleged violation to the Department in accordance with N.J.A.C. 7:1H-4.3(d), and shall provide any reasonable assistance that the Department requests in conducting an enforcement action regarding the violation.

7:1H-13.2 Inventory to be provided by Department

(a) The Department shall provide the certified local health agency with a list of all registrants (as such term is defined in N.J.A.C. 7:31-1.5) within the certified local health agency's geographic jurisdiction.

(b) Each year, the Department shall provide the certified local health agency with an update of the list described in (a) above.

7:1H-13.3 Identification of noncompliance

(a) The certified local health agency shall determine whether any EHS site is present within its geographic jurisdiction but not included as a registrant on the list described in N.J.A.C. 7:1H-13.2(a).

(b) In the monthly report submitted under N.J.A.C. 7:1H-4.2, the certified local health agency shall provide the following information regarding all EHS facilities identified under (a) above:

1. The lot and block number and street address of the EHS site; and

2. A list of all extraordinarily hazardous substances handled, used, manufactured, stored or generated at the facility, the quantity of each EHS handled, used, manufactured or stored, and the capacity of the facility to generate each such EHS.

7:1H-13.4 Notification to EHS facilities

(a) Upon the Department's request, the certified local health agency shall notify a person that the Department has preliminarily determined that the person is required to register under N.J.A.C. 7:31-2.5.

(b) The certified local health agency shall make the notification required under (a) above in writing, and include the following:

1. All registration forms that the person is required to submit to comply with N.J.A.C. 7:31; and

2. The explanatory material relevant to the person's noncompliance which the Department has provided to the certified local health agency.

7:1H-13.5 Right of entry

Without limiting the authority of the certified local health agency under N.J.A.C. 7:1H-4.11, the certified local health agency may exercise the right of entry granted to the Department under N.J.S.A. 13:1K-27(a).

7:1H-13.6 Confidentiality

(a) This section governs the use and disclosure by a certified local health agency of any information obtained in connection with this subchapter.

(b) With respect to any information described in (a) above, the certified local health agency shall:

1. Use the information only for the purpose of performing the duties required under this chapter;

2. Not disclose the information except as authorized in writing by the Department;

3. Store the information in locked cabinets in secure rooms; and

4. Return to the Department all copies of the information, and any abstracts or extracts therefrom, upon the Department's request or whenever the information is no longer required for the performance of duties required under this chapter.

(c) If information described in (a) above is disclosed in violation of this section or N.J.A.C. 7:31-5, the Department shall have all remedies available under N.J.A.C. 7:31-5. Such disclosure is grounds for suspension or termination of the certification.

SUBCHAPTER 14. ENVIRONMENTAL HEALTH PERFORMANCE STANDARDS FOR A RIGHT TO KNOW PROGRAM

7:1H-14.1 General performance standards for administering a Community Right to Know program

(a) A certified local health agency may administer a Community Right to Know program, to the extent authorized in its certification.

(b) A certified local health agency conducting a Community Right to Know program shall do so throughout its entire geographic jurisdiction in accordance with the following:

1. The Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 through 31, and the rules promulgated by the Department thereunder, N.J.A.C. 7:1G;

2. The performance standards of general applicability set forth in N.J.A.C. 7:1H-4;

3. The standards set forth in (d) below; and

4. The standards applicable to the particular program areas set forth elsewhere in this subchapter.

(c) A term used in this subchapter, not defined in N.J.A.C. 7:1H-1.4, and defined in N.J.A.C. 7:1G-1.2, shall have the meaning set forth in N.J.A.C. 7:1G-1.2.

(d) The certified local health agency shall investigate and document allegations of violations of the types listed in N.J.A.C. 7:1H-14.6(a), which allegations are brought to the attention of the agency by the Department, by citizen complaints, or by other sources. Within 10 working days after receiving notice of the suspected activity, the certified local health agency shall inspect the location at which the alleged violation is occurring or has occurred. If the certified local health agency determines that a violation exists, the certified local health agency shall refer the matter to the Department in accordance with N.J.A.C. 7:1H-4.3(d), and shall provide any reasonable assistance which the Department requests in conducting an enforcement action regarding the violation.

(e) Nothing in this subchapter shall be construed to prohibit a certified local health agency from referring the following to the Department of Health:

1. Suspected violations of Right to Know labeling requirements for private employers under N.J.A.C. 8:59-11; or

2. Suspected violations of the Worker Right to Know requirements for public employers under N.J.A.C. 8:59.

7:1H-14.2 Relationship between certified local health agency and designated county lead agency

(a) A certified local health agency shall coordinate its administration of a Right to Know program with the activities of the designated county lead agency (defined at N.J.A.C. 7:1G-1.2), to avoid duplicative or conflicting actions.

(b) This subchapter shall not be construed to prohibit a certified local health agency administering a Right to Know program from also serving as the designated county lead agency pursuant to N.J.A.C. 7:1G.

(c) If the certified local health agency and the designated county lead agency under N.J.A.C. 7:1G-1.2 are not one and the same, the certified local health agency shall enter into an agreement with the designated county lead agency, outlining the responsibilities of each agency and establishing how their activities will be coordinated. The certified local health agency shall include a copy of the agreement with its work program.

7:1H-14.3 List of covered employers

(a) The Department shall make available to the certified local health agency lists containing the names and addresses of the following:

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1. All employers (as such term is defined in N.J.A.C. 7:1G-1.2) within the certified local health agency's geographic jurisdiction who are listed in the Department's Right to Know database;

2. All employers that the Department knows to be operating within the certified local health agency's geographic jurisdiction who have not submitted a Community Right to Know Survey by the date specified under N.J.A.C. 7:1G-5; and

3. All employers whose correspondence or survey forms have been returned to the Department as undeliverable.

(b) Each year, the Department shall make available to the certified local health agency an update of the list described in (a) above.

7:1H-14.4 Investigative work

(a) The certified local health agency shall inspect employers included in the list made available under N.J.A.C. 7:1H-14.3(a)2, to verify that the employers are still operating within the certified local health agency's geographic jurisdiction. The certified local health agency shall inspect the number of employers required under the certification.

(b) The certified local health agency shall inspect all addresses included in the list made available under N.J.A.C. 7:1H-14.3(a)3, to determine whether the employer on the list is still operating at that address.

(c) The certified local health agency shall inspect business operations to determine whether an employer (as defined in N.J.A.C. 7:1G-1.2) is operating within its geographic jurisdiction but is not included on the list described in N.J.A.C. 7:1H-14.3(a)1.

(d) The certified local health agency shall inspect business operations of employers included in the list of covered employers made available under N.J.A.C. 7:1H-14.3(a)1, to determine whether an employer has listed all EHSs required to be included in the Community Right to Know Survey under N.J.A.C. 7:1G-3.1.

(e) The certified local health agency shall determine whether an employer has transmitted the Community Right to Know Survey to the required agencies designated under N.J.A.C. 7:1G-5.1(b).

(f) In making inspections under (a) through (e) above, the certified local health agency shall coordinate its efforts with the Department, with the Department of Health and with the designated county lead agency to avoid duplicative inspections.

(g) The inspections performed under (c) through (e) above may be based upon random spot checks, referrals from the Department, citizen complaints or inquiries, or any other reasonable source.

(h) Upon the Department's request, the certified local health agency shall determine whether an employer specified by the Department is no longer engaged in business operations at the address in the Department's records. If so, the certified local health agency shall determine:

1. Whether the employer is engaged in business operations at any other location within the geographic jurisdiction of the certified local health agency; and

2. Whether records available for inspection by the certified local health agency indicate that the employer is engaged in business operations elsewhere in the State.

7:1H-14.5 Notices of violation

(a) The certified local health agency shall issue a notice of violation to each employer listed in N.J.A.C. 7:1H-14.3(a)2 or 3 who is verified as continuing to operate under N.J.A.C. 7:1H-14.4(a) or (b), for the employer's failure to submit a Community Right to Know Survey.

(b) In a notice of violation issued under (a) above, the certified local health agency shall include the information required under N.J.A.C. 7:1H-4.10.

(c) If the certified local health agency issues a notice of violation to a governmental unit, the certified local health agency shall provide the State Department of Health with a copy of the notice.

(d) If the certified local health agency issues a notice of violation to any employer other than a governmental unit, the certified local health agency shall provide the Department with a copy of the notice.

7:1H-14.6 Enforcement actions

(a) The certified local health agency may commence an enforcement action in a court of competent jurisdiction for the following types of violations:

1. Failure to file a Community Right to Know Survey with the Department, as required under N.J.A.C. 7:1G-3.1 or 5.1;

2. Failure to transmit a copy of the Community Right to Know Survey to any other agency designated under N.J.A.C. 7:1G-5.1(b); or

3. Failure to list all EHSs required to be included in the Community Right to Know Survey under N.J.A.C. 7:1G-3.1.

(b) Upon the Department's request in a specific case, the certified local health agency shall commence an enforcement action in a court of competent jurisdiction for violations of the Worker and Community Right to Know Act or N.J.A.C. 7:1G.

7:1H-14.7 Reporting

(a) The certified local health agency shall provide the information described in this section in the report submitted under N.J.A.C. 7:1H-4.2, in addition to all information required under N.J.A.C. 7:1H-4.2.

(b) The certified local health agency shall provide the following information regarding all employers identified under N.J.A.C. 7:1H-14.4(a), (b) and (c):

1. The name and street address of the place of business of the employer;

2. The employer's State Employer Identification Number and any other identifying number used for State taxation purposes; and

3. A statement that the employer's business is or is not operating, a description of the employer's business operations, and the Standard Industrial Classification of those operations if known to the certified local health agency.

7:1H-14.8 Educational and informational activities

(a) The certified local health agency may conduct training for fire departments and emergency response agencies within its geographic jurisdiction, for the purpose of enabling them to obtain and use information regarding employers and EHSs efficiently and effectively.

(b) Personnel of the certified local health agency providing the training described in (a) above shall first complete the "Right to Know Train the Trainer" course offered by the Human Resources Development Institute.

(c) If the certified local health agency is receiving copies of the Community Right to Know Survey from employers within its geographic jurisdiction, the certified local health agency shall respond to public inquiries regarding the information contained in the survey. The certified local health agency shall make such information available in accordance with the following:

1. The confidentiality requirements of N.J.A.C. 7:1H-14.10 and 7:1G-6; and

2. The 30-day time frame for response set forth in N.J.S.A. 34:5A-9(d).

7:1H-14.9 Right of entry

Without limiting the authority of the certified local health agency under N.J.A.C. 7:1H-4.11, the certified local health agency may exercise the right of entry granted to the Department under N.J.S.A. 34:5A-29(b).

7:1H-14.10 Confidentiality

(a) If an employer informs the certified local health agency that any information is a trade secret, the certified local health agency shall not attempt to obtain the information except in accordance with (b) and (c) below.

1. The procedure in (b) below applies to any information that the employer states:

i. Is the subject of a trade secret claim pending under N.J.A.C. 7:1G-6 or 8:59-3;

ii. Is the subject of an appeal of a trade secret determination pending under N.J.A.C. 7:1G-6.13 or 8:59-3.13; or

iii. Has been determined to be a valid trade secret by either the Department of Health or the Department.

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2. The procedure in (c) below applies to any information that the employer states is a trade secret, for which the employer has not yet made a trade secret claim to the Department of Health or the Department.

(b) Before attempting to obtain any information listed in (a)1i, ii or iii above, the certified local health agency shall contact the Department of Health or the Department to verify the employer's statement under (a)1i, ii or iii above.

1. If the Department of Health or the Department advises the certified local health agency that the information in question is the subject of a trade secret claim that was denied, and for which all appeals have been exhausted, the certified local health agency may seek the information from the employer.

2. If the Department of Health or the Department verifies the employer's statement under (a)1i or ii above, the certified local health agency shall not attempt to obtain the information. The certified local health agency may seek the information only after the Department of Health or the Department confirms that the trade secret claim for the information has been denied and that all appeals of the denial have been exhausted.

3. If the Department of Health or the Department verifies the employer's statement under (a)1iii above, the certified local health agency shall not attempt to obtain the information.

4. If the Department of Health and the Department advise the certified local health agency that no trade secret claim has been submitted for the information in question, the certified local health agency shall proceed in accordance with (c) below.

(c) If no trade secret claim has yet been made for the information in question, the certified local health agency shall proceed in accordance with (c)1 through 3 below.

1. The certified local health agency shall inform the employer that if a trade secret claim is not submitted to the Department of Health or the Department within 30 days after the inspection or investigation, the certified local health agency will then be able to obtain the information.

2. If at least 30 days after the inspection or investigation, the Department of Health and the Department both advise the certified local health agency that no trade secret claim has been submitted for the information, the certified local health agency may seek the information from the employer.

3. If the Department of Health or the Department confirms that a trade secret claim has been submitted for the information, the certified local health agency may seek the information only after the Department of Health or the Department confirms that the trade secret claim for the information has been denied and that all appeals of the denial have been exhausted.

(d) If in the course of an inspection or investigation, the certified local health agency discovers information that the employer states is a trade secret, the certified local health agency shall:

1. Refrain from continuing the inspection or investigation with respect to the asserted trade secret, but continue such other aspects of the inspection or investigation that are appropriate under this subchapter;

2. Advise the employer to submit a trade secret claim for the information to the Department of Health or to the Department, as applicable; and

3. Refrain from disclosing the information unless and until the Department of Health or the Department advises the certified local health agency that the trade secret claim is invalid.

(e) If the certified local health agency receives any trade secret information from the Department of Health or the Department, the certified local health agency shall:

1. Refrain from disclosing the information except as authorized in writing by the Department of Health or the Department; and

2. Protect the information from unauthorized disclosure in accordance with a plan approved under N.J.A.C. 7:1G-6.15(c) or 8:59-3.15(c).

(f) If the certified local health agency violates any requirement of (e) above, the Department of Health shall have all remedies available under N.J.A.C. 8:59-3, and the Department shall have all remedies available under N.J.A.C. 7:1G-6. Such a violation is grounds for suspension or termination of the certification.

SUBCHAPTER 15. ENVIRONMENTAL HEALTH PERFORMANCE STANDARDS FOR A PESTICIDE CONTROL PROGRAM

7:1H-15.1 General performance standards for administering a pesticide control program

(a) A certified local health agency may administer a pesticide control program, to the extent authorized in its certification.

(b) A certified local health agency conducting a pesticide control program shall do so throughout its entire geographic jurisdiction in accordance with the following:

1. The Pesticide Control Act of 1971, N.J.S.A. 13:1F-1 through 18;

2. The rules promulgated by the Department under the authority of the Pesticide Control Act of 1971, N.J.A.C. 7:30;

3. The performance standards of general applicability set forth in N.J.A.C. 7:1H-4;

4. The standards set forth in (d) below; and

5. The standards applicable to the particular program areas set forth elsewhere in this subchapter.

(c) A term used in this subchapter, not defined in N.J.A.C. 7:1H-1.4, and defined in N.J.A.C. 7:30, shall have the meaning set forth in N.J.A.C. 7:30.

(d) The certified local health agency shall investigate and document allegations of violations of the Pesticide Control Act of 1971 or of the rules and regulations promulgated thereunder, which allegations are brought to the attention of the agency by the Department, by citizen complaints, through inspections, or by other sources. Upon receipt of a complaint, the certified local health agency shall record on a form provided by the Department the information provided by the complainant, and shall immediately provide the information to the Pesticide Control Program in the Department. Upon the Department's request, the certified local health agency shall investigate the alleged violation within the time period allotted in the certification.

(e) A certified local health agency administering a pesticide control program shall collect formulation samples, environmental samples and dilution samples when relevant to any of the investigations listed in this subchapter.

(f) When a certified local health agency administering a pesticide control program determines that a pesticide is being held, used, distributed, sold or offered for sale in violation of any of the provisions of the Pesticide Control Act of 1971 or N.J.A.C. 7:30:

1. The certified local health agency may issue a written Stop Sale, Stop Use, Removal, or Embargo Order to the owner or custodian of any such pesticide pursuant to N.J.A.C. 7:30-1.10. Immediately after issuing such an order, the certified local health agency shall notify the Department and provide the Department with all information available to the certified local health agency regarding the violation;

2. The certified local health agency shall report findings and refer violations to the Department. The Department will determine whether an enforcement action other than or in addition to an order under (f)1 above is appropriate, and what action is appropriate. The Department will provide the certified local health agency with a recommendation of the appropriate enforcement action if any, and the certified local health agency shall undertake such action within the time prescribed in the recommendation; and

3. The certified local health agency shall provide the pesticide dealer, commercial pesticide applicator, commercial pesticide operator, or other individuals involved in the violation with information regarding the applicable requirements of N.J.A.C. 7:30.

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7:1H-15.2 Performance standards for monitoring commercial pesticide applicators and operators and implementing registration requirements, notification requirements and permit requirements

(a) A certified local health agency administering a pesticide control program shall determine whether pesticides have been applied.

(b) If the certified local health agency determines that pesticides have been applied, the certified local health agency shall determine whether:

1. The application was conducted by a person authorized under N.J.A.C. 7:30-5.2(a) or 6.2(a);

2. The person who conducted the application was in compliance with the applicable permit provisions of N.J.A.C. 7:30-9.2 and 9.3;

3. The pesticide applicator business involved in the application was registered in compliance with N.J.A.C. 7:30-7.2(a);

4. The pesticide applicator and/or the pesticide applicator business involved in the application complied with the applicable notification requirements under N.J.A.C. 7:30-9.8 through 9.12; and

5. Any aerial application of pesticides was conducted in accordance with N.J.A.C. 7:30-10.5.

(c) To determine and document whether a violation of any requirement listed under (b) above has occurred, the certified local health agency shall perform at least the following investigations in addition to those required under N.J.A.C. 7:1H-4.7:

1. Consult with the Department to obtain information regarding the registration of the pesticide product in question;

2. Obtain copies of the record of application, notification material, and permit forms; and

3. Photograph posted notifications for the pesticide application.

(d) Upon determining that a violation of requirements listed in (b) above has occurred, the certified local health agency shall take action in accordance with N.J.A.C. 7:1H-15.1(f).

7:1H-15.3 Performance standards for inspecting the sale and distribution of pesticide products

(a) Upon the Department's request, the certified local health agency shall determine whether a persons selling or distributing pesticide products are in compliance with the applicable pesticide product registration provisions of N.J.A.C. 7:30-1.3.

(b) Upon the Department's request, the certified local health agency shall determine whether a sale or distribution of a restricted use pesticide listed in N.J.A.C. 7:30-2.3 was conducted by one of the following:

1. A pesticide dealer business registered in accordance with the applicable provision of N.J.A.C. 7:30-4.2;

2. A pesticide dealer certified and registered in accordance with the applicable provisions of N.J.A.C. 7:30-3.2; or

3. A person working under the direct supervision of a certified and registered pesticide dealer, in accordance with the applicable provisions of N.J.A.C. 7:30-4.4(c).

(c) To determine and document whether a violation of any requirement listed under (a) or (b) above has occurred, the certified local health agency shall perform the investigations required under N.J.A.C. 7:1H-4.7, and shall also obtain copies of the record of the pesticide sale.

(d) Upon determining that a violation of requirements listed in (a) or (b) above has occurred, the certified local health agency shall take action in accordance with N.J.A.C. 7:1H-15.1(f).

7:1H-15.4 Performance standards for inspecting the storage and transportation of pesticides

(a) A certified local health agency administering a pesticide control program shall determine whether pesticides are being stored or transported by a commercial pesticide applicator or commercial pesticide operator.

(b) If the certified local health agency determines that pesticides are being transported or stored by a commercial pesticide applicator or commercial pesticide operator, the certified local health agency shall determine whether:

1. The pesticides are being transported in accordance with the applicable requirements of N.J.A.C. 7:30-9.4; and

2. The pesticides are being stored in compliance with N.J.A.C. 7:30-9.5.

(c) To determine and document whether a violation of any requirement listed under (b) above has occurred, the certified local health agency shall perform at least the following investigations in addition to those required under N.J.A.C. 7:1H-4.7:

1. Consult with the Department to obtain information regarding the registration and classification of the pesticide product in question; and

2. Obtain copies of pesticide inventories forwarded to the local fire department.

(d) Upon determining that a violation of any requirement listed in (b) above has occurred, the certified local health agency shall take action in accordance with N.J.A.C. 7:1H-15.1(f).

7:1H-15.5 Performance standards for investigating reportable pesticide spills and misapplications

(a) Upon the Department's request, a certified local health agency administering a pesticide control program shall investigate suspected or actual pesticide spills and misapplications.

(b) If the certified local health agency determines that a reportable pesticide spill or misapplication has occurred, the certified local health agency shall determine whether:

1. The pesticide spill or misapplication was reported in accordance with N.J.A.C. 7:1H-9.14;

2. Cleanup and removal of the spilled or misapplied pesticides commenced immediately;

3. Any injury to persons or to the environment resulted from the presence of the spilled or misapplied pesticide;

4. All persons involved in the application were licensed under N.J.A.C. 7:30-5.2(a), 6.2(a) or 7.2(a);

5. Equipment used during the application was properly maintained and accurately calibrated;

6. The record of pesticide application contains all information required under N.J.A.C. 7:30-6.8, 7.3 or 8.8, as applicable; and

7. The application was performed in a manner consistent with the provisions of the Federal registered label and other requirements and restrictions in N.J.A.C. 13:1F and 7:30.

(c) To determine and document whether a violation of any requirement listed under (b) above has occurred, the certified local health agency shall perform at least the following investigations in addition to those required under N.J.A.C. 7:1h-4.7:

1. Obtain a copy of the written report notifying the Department of the reportable pesticide spill or misapplication;

2. Obtain copies of records of pesticide application, notification material, and permit forms;

3. Photograph posted notifications for pesticide applications; and

4. Obtain copies of relevant equipment maintenance records.

(d) Upon determining that a violation of any requirement listed in (b) above has occurred, the certified local health agency shall take action in accordance with N.J.A.C. 7:1H-15.1(f).

7:1H-15.6 Monthly reports

In addition to the information required under N.J.A.C. 7:1H-4.2, the certified local health agency shall include copies of copies of all of the inspection reports prepared under N.J.A.C. 7:1H-4.7 and 15.7.

7:1H-15.7 Documentation of inspections and investigations

(a) In addition to the information required under N.J.A.C. 7:1H-4.6, the certified local health agency shall include the following information in documenting an inspection or investigation:

1. The registration number of each pesticide applicator, pesticide operator and pesticide dealer who is the subject of the inspection or investigation;

2. If applicable, a statement that a person who is the subject of the inspection or investigation is required to be registered as a pesticide applicator, pesticide operator or pesticide dealer, and is not so registered;

3. The chemical name and EPA registration number of any pesticides used which are the subject of the inspection or investigation;

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4. The method by which any pesticides which are the subject of the inspection or investigation were applied; and

5. A specific description of the location at which the pesticides were applied.

SUBCHAPTER 16. ENVIRONMENTAL HEALTH PERFORMANCE STANDARDS FOR ADMINISTERING A COOPERATIVE COASTAL MONITORING PROGRAM

7:1H-16.1 General performance standards for administering a cooperative coastal monitoring program

(a) A certified local health agency may administer a cooperative coastal monitoring program, to the extent authorized in its certification.

(b) A certified local health agency conducting a cooperative coastal monitoring program shall do so in accordance with the following:

1. The Department of Health State Sanitary Code for Public Recreational Beaches, N.J.A.C. 8:26;

2. The performance standards of general applicability set forth in N.J.A.C. 7:1H-4; and,

3. The standards set forth in this subchapter.

(c) A term used in this subchapter, not defined in N.J.A.C. 7:1H-1.4, and defined in N.J.A.C. 8:26, shall have the meaning set forth in N.J.A.C. 8:26.

7:1H-16.2 Location of water quality monitoring stations

(a) Ocean and bay monitoring stations located for the purposes of ensuring compliance with the bathing water bacteriological quality standard shall coincide with recreational bathing areas.

(b) Bay stations monitored for ambient water quality which do not coincide with recreational areas regulated in N.J.A.C. 8:26 and ocean stations located in areas in which primary contact activities are specifically prohibited are environmental stations, and are not subject to the confirmation sampling requirements in N.J.A.C. 7:1H-16.4.

(c) Ocean bracket stations shall be located on either side of the monitoring station that exceeded the standard and between adjacent stations which do not exceed the standard. Bay bracket stations shall be positioned at the recreational bathing area limits.

(d) The certified local health agency shall annually review beach water quality monitoring stations, to determine the following:

1. The extent to which the water they monitor is representative of the quality of the nearshore ocean water;

2. Their proximity to ocean and bay recreational bathing areas; and

3. The extent to which they are helpful in assessing the effects of nonpoint and point source discharges.

(e) Each year, the certified local health agency shall prepare a list of new monitoring stations that the agency proposes to include in its cooperative coastal monitoring program. The certified local health agency shall submit this list to the Department before May 1 of each year. The Department shall approve or disapprove the proposed new stations within 14 days after receiving the proposed list, based upon the extent to which they are expected to meet the criteria listed in (a) above. The certified local health agency shall install all new monitoring stations approved by the Department within seven days after receiving the Department's approval.

7:1H-16.3 Monitoring of beach water quality

(a) The certified local health agency shall monitor beach water quality by collecting samples on the following schedule during the shore season:

1. Every Monday, except July 4 if that holiday falls on a Monday, Memorial Day, and Labor Day;

2. On the Tuesday following July 4 if that holiday falls on a Monday, and on the Tuesday following Memorial Day (observed) and the Tuesday following Labor Day;

3. On the day after a day listed in (a)1 or 2 above, if severe oceanic or meteorological conditions or resource limitations prevented the certified local health agency from conducting sampling on the day listed under (a)1 or 2 above.

(b) In determining when to perform beach water quality sampling, the certified local health agency shall consider the following:

1. Whether the bathing beach is open or closed. More frequent sampling and an increased number of samples is appropriate when the beach is closed;

2. Whether conditions may adversely affect the validity of samples; and

3. Whether conditions may endanger the safety of field staff performing the sampling.

(c) The certified local health agency shall perform beach water sampling and sample preservation in accordance with Department training and N.J.A.C. 8:26-7.18.

(d) The local certified health agency shall analyze water quality samples for compliance with the bathing water bacteriological quality standards established in N.J.A.C. 8:26-7.19 and any other promulgated federal or state standards required by the department and applicable to bathing water quality. In analyzing samples for fecal coliform concentrations, the certified local health agency shall use a Department-approved technique that yields results within 24 hours.

(e) The local certified health agency shall collect samples as requested by the department for the purpose of analysis by the department with the bacteriological standards contained in N.J.A.C. 7:9-4.

7:1H-16.4 Confirmation sampling

(a) This section sets forth the requirements for confirmation sampling from ocean and bay monitoring stations located for purposes of ensuring compliance with the bathing water bacteriological quality standard. The confirmation sampling requirements of this section do not apply to bay stations that do not coincide with recreational areas regulated in N.J.A.C. 8:26, or to ocean stations located in areas in which primary contact activities are specifically prohibited.

(b) Immediately after receiving a preliminary analysis showing that a sample has fecal coliform concentrations exceeding the bathing water bacteriological quality standard at N.J.A.C. 8:26-7.19, the certified local health agency shall obtain another sample from the same station in accordance with N.J.A.C. 8:26.

(c) The certified local health agency shall obtain samples from as many ocean and bay bracket stations as necessary to determine the extent of the bacterial contamination.

(d) A sanitary survey shall be performed with the confirmatory sampling to assess potential sources of the bacterial contamination. The sanitary survey shall include sampling of the effluent from, or ambient water near, any and all potential sources of the fecal coliform contamination.

(e) The certified local health agency shall continue resampling under (b) above and bracket sampling under (c) above until the analysis of these samples indicates compliance with the bathing water bacteriological quality standard.

7:1H-16.5 Beach closing

The certified local health agency shall determine whether to close and when to reopen beaches in accordance with N.J.A.C. 8:26-8.8.

7:1H-16.6 Reporting requirements

(a) The certified local health agency shall verbally notify the department immediately upon completion of analyses exceeding the bathing water bacteriological quality standard.

(b) The certified local health agency shall transmit to the Department via fax or modem all water quality results within five working days after receiving the weekly analyses.

7:1H-16.7 Services to be performed at Department's request

(a) Upon the Department's request, the certified local health agency shall:

1. Provide laboratory services to the Department for emergency monitoring of bacteriological water quality, if the certified local health agency is qualified to provide such services; and

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2. Provide field confirmation of reported coastal pollution incidents.

SUBCHAPTER 17. ENVIRONMENTAL HEALTH PERFORMANCE STANDARDS FOR ADMINISTERING A RADON CLUSTER SURVEY PROGRAM

7:1H-17.1 General performance standards for administering a radon cluster survey program

(a) A certified local health agency may administer a radon cluster survey program to the extent authorized in its certification.

(b) A certified local health agency administering a radon cluster survey program shall do so in accordance with the following:

1. The laws governing radon gas and radon progeny at N.J.S.A. 26:2D-59 through 62;

2. The performance standards of general applicability set forth in N.J.A.C. 7:1H-4; and

3. The performance standards set forth in this subchapter.

(c) A term used in this subchapter, not defined in N.J.A.C. 7:1H-1.4, and defined in N.J.A.C. 7:28-27.3, shall have the meaning set forth in N.J.A.C. 7:28-27.3.

7:1H-17.2 Training

The certified local health agency shall designate at least two individuals to perform radiological testing in implementing radon cluster surveys. The designated individuals may not do so until they have completed the "Elevated Radon Area Evaluation Program" training session sponsored by the Department.

7:1H-17.3 Radiological sampling of trigger house

(a) Under N.J.S.A. 26:2D-74, a person certified pursuant to N.J.S.A. 26:2D-70 or 71 to provide radon testing or mitigation services is required to disclose to the Department the results of any tests performed. If the test results for a dwelling exceed 150 picocuries per liter (pCi/L), the Department may send the certified local health agency a "cluster trigger house documentation" form.

(b) Within two days after receiving the cluster trigger house documentation form under (a) above, the certified local health agency shall contact an adult resident of the dwelling listed in the form to schedule an appointment to conduct radiological testing as described in (d) below.

(c) The certified local health agency shall schedule the appointment for radiological testing for a date that is within three working days after the date of the contact under (b) above, or as soon thereafter as is practicable.

(d) The certified local health agency shall conduct the radiological testing in the manner described in (d)1 through 7 below.

1. The certified local health agency shall first perform a micro R survey by using a micro R meter to measure the level of gamma radiation in the dwelling, and to identify the locations of sources of radon and radon progeny. In conducting the micro R survey, the certified local health agency shall survey the basement of the dwelling (or, if there is no basement, the lowest inhabitable area of the dwelling) and all other inhabitable floors of the dwelling.

2. The certified local health agency shall measure levels of gamma radiation with the micro R meter in accordance with the training provided in the "Elevated Radon Area Evaluation Program" training session attended pursuant to N.J.A.C. 7:1H-17.2. The certified local health agency shall make the gamma measurements at least three feet above the floor.

3. The certified local health agency shall sketch the floors surveyed, and display on the sketch the location and results of the readings from the micro R survey.

4. The certified local health agency shall deploy charcoal canisters in accordance with the following:

i. The certified local health agency shall deploy at least two canisters in the basement (or, if there is no basement, in the lowest inhabitable area of the dwelling). The certified local health agency shall deploy one canister where the initial screening radon measurement was conducted, and one canister at locations on other floors where high readings (compared to the average readings throughout the dwelling) were recorded in the micro R survey;

ii. The certified local health agency shall deploy one canister on the first floor of the dwelling, in the family room or living room; and

iii. The certified local health agency shall deploy one canister in the master bedroom regardless of its location in the house. An additional canister may be deployed in any bedroom with children and in other rooms where micro R gamma readings are significantly higher than the average readings throughout the dwelling.

5. The certified local health agency shall discuss with an adult resident of the dwelling the measurements obtained under (d)2 above. The certified local health agency shall answer the resident's questions regarding radon, or refer the resident to the cluster project manager in the Department if the certified local health agency is unable to answer the question. The certified local health agency may suggest the following immediate steps to be taken:

i. If any measurement in a room or area of the dwelling equals or exceeds 30 microroentgens per hour, the certified local health agency may suggest that the residents isolate those rooms or areas by closing the doors and excluding people; and

ii. If all of the gamma measurements are less than 30 microroentgens per hour, the certified local health agency may advise the residents to await the charcoal canister results before taking action; and

6. If the home uses a private well for its potable water supply, collect samples of the water from the well in vials provided by the Department.

(e) Within two working days after conducting the micro R survey under (d) above, the certified local health agency shall deliver the following to the Department:

1. The sketch prepared under (d)5 above; and

2. A completed cluster trigger home documentation form provided by the department, containing the following information:

i. The date of the confirmatory testing;

ii. A micro R meter survey map, showing the locations tested and the readings obtained;

iii. The date on which charcoal canisters were deployed, the number deployed, and the locations at which they were deployed; and

iv. The results of water sampling, if any, under (d)6 above.

(f) The certified local health agency shall retrieve the charcoal canisters and the chain of custody forms three days after deploying the canisters. The certified local health agency shall hand-deliver or mail the canisters and chain of custody forms to the Department by the close of the business day on which they are retrieved.

(g) If the dwelling surveyed under (d) above is located on property containing a potable water well serving a nonpublic system (as that term is defined at N.J.A.C. 7:10-1.3), the certified local health agency shall collect water samples in vials provided by the department. The certified local health agency shall collect two samples from locations where the water is routinely used. The certified local health agency shall deliver the samples to the Department within 24 hours after they are collected.

7:1H-17.4 Radon cluster surveys

(a) If the radiological sampling performed under N.J.A.C. 7:1H-17.3 confirms that the concentration of radon in the basement of the dwelling surveyed exceeds 150 pCi/L, the certified local health agency shall conduct a radon cluster survey in accordance with this section. The certified local health agency shall complete the cluster investigation within six weeks after the date of confirmation.

(b) Within three working days after receiving notice of the confirmation under (a) above, the certified local health agency shall provide the Department with a current tax map of the affected area. The certified local health agency shall update the map to show the location of any new dwellings that are not included on the current tax map.

(c) The Department shall use the map provided under (b) above to prepare a working radon cluster survey map. The working radon cluster survey map shows the dwellings that the Department selects to be tested under (d) below. The Department shall provide the map, charcoal canisters and sample vials to the certified local health agency.

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(d) Within three working days after receipt of materials under (c) above, the certified local health agency shall deploy charcoal canisters at the residential dwellings selected by the department for inclusion in the survey. The certified local health agency shall not sample the following residential dwellings:

1. Any dwelling at which a sign is posted, stating that the dwelling is for sale; or

2. Any dwelling that has previously been tested for radon by the Department, a private tester certified under N.J.A.C. 7:28-27, or the certified local health agency.

(e) If the certified local health agency cannot obtain access to a dwelling selected by the department for inclusion in the survey, the certified local health agency shall take samples from the closest dwelling that was not selected for inclusion in the survey.

(f) In the initial phase of the survey, the certified local health agency shall:

1. Deploy one canister in each dwelling. The canister shall be placed in the lowest inhabitable area of the dwelling;

2. Collect water samples, in vials provided by the Department, at dwellings located on property containing a potable water well serving a nonpublic system (as that term is defined at N.J.A.C. 7:10-1.3); and

3. Collect at least 10 percent duplicate air samples and 100 percent duplicate water samples.

(g) On the third day after deploying the canisters, the certified local health agency shall collect the canisters and hand-deliver them to the Department's Bureau of Radiation Inorganic Analytical Services at 380 Scotch Road, Trenton, New Jersey.

7:1H-17.5 Recordkeeping

For at least 10 years after a radon cluster survey is completed, the certified local health agency shall retain all records associated with the survey. The certified local health agency shall allow the Department to have access to these records during regular working hours.

7:1H-17.6 Public outreach

The certified local health agency shall conduct outreach activities in the municipalities where the radon cluster surveys were conducted, to inform the public of radon cluster survey activities. The outreach activities shall employ at least one of the following media: newspaper article, local radio or television announcement or scheduled public meeting.

SUBCHAPTER 18. ENVIRONMENTAL HEALTH PERFORMANCE STANDARDS FOR OPERATING A GEOGRAPHIC INFORMATION SYSTEM

7:1H-18.1 Performance standards for the operation of a Geographic Information System (GIS)

(a) A certified local health agency may operate a Geographic Information System (GIS) to the extent authorized in its certification.

(b) The certified local health agency shall operate and maintain a computer system that is fully compatible with the Department's GIS hardware and software.

(c) Before purchasing any equipment to be used as part of the GIS, the certified local health agency shall obtain the Department's approval. The approval shall be based on a joint effort by the Department and the certified local health agency to evaluate the need for the equipment and determine whether it is suitable for use with the GIS.

(d) The certified local health agency shall designate a GIS coordinator. Within three months after the certified local health agency obtains the hardware and software described in (b), the GIS coordinator shall obtain initial Department-approved training for administration of the GIS and use of the hardware and software. This requirement shall not apply if the certified local health agency demonstrates to the Department that the GIS coordinator has previously completed the training. The GIS coordinator shall have the following duties:

1. Maintaining and administering the GIS, or overseeing the person assigned to maintain the GIS pursuant to (e) below;

2. Attending the user group meetings sponsored by the Department for county GIS users;

3. Preparing and submitting to the Department a status report including the following information for each GIS project undertaken by the certified local health agency:

i. The name of the project manager;

ii. A description of the project;

iii. The percentage of the project that has been completed as of the date of the report;

iv. Whether the project is on schedule, and if not, the extent to which it is behind schedule and the reasons for the delay;

v. The projected date of completion of the project;

vi. The status of deliverables to be provided to the Department; and

vii. Following completion of the project, a description of the findings and conclusions from the project, and an explanation of how the project is of assistance to the certified local health agency.

4. Meeting with the Department at least semi-annually to discuss the status report, identify projects of interest to both the Department and the certified local health agency, projects of mutual interest, and foster cooperation between the certified local health agency and the Department in implementing those projects.

(e) Subject to the Department's approval, the certified local health agency may contract with another person to perform the functions listed in (d)1 above.

7:1H-18.2 Project lists

(a) By November 15 of each year, the certified local health agency shall meet with the Department to develop a list of priority projects for GIS applications, to be included in the grant application under N.J.A.C. 7:1H-20.1. The projects included, and their relative priority, shall be based upon the following criteria:

1. The priorities of the Department and the certified local health agency for GIS data development; and

2. The extent to which geographic data concerning the certified local health agency's geographic jurisdiction is already available from the Department's GIS program.

(b) The Department shall provide the certified local health agency with digital data layers based on the priority list. After receiving the initial layers, the certified local health agency may make future requests to the Department for any remaining layers from the Department's digital data layer inventory (that is, mapping data in a digital format) based on the agency's changing or developing needs.

(c) In its grant application submitted under N.J.A.C. 7:1H-20.1, the certified local health agency shall include a work strategy that describes a proposed method for implementing the GIS applications during the coming year and the proposed deliverables for the year.

7:1H-18.3 General performance standards for GIS operation

(a) The certified local health agency shall maintain a cooperative relationship with the Department to facilitate data sharing and the provision of in-kind services whenever feasible. The certified local health agency shall make available to the department any and all updated, checked or improved versions of the digital data layers provided by the Department under N.J.A.C. 7:1H-18.2(b), and all new data layers created using the data layers provided by the Department. Upon the Department's request, the certified local health agency shall make available to the Department any mapped or digital data developed by the certified local health agency.

(b) The certified local health agency shall provide the Department with copies of the new and updated digital data it develops in its GIS projects. The certified local health agency shall provide the data upon the schedule set forth in the grant agreement under N.J.A.C. 7:1H-20. If the grant agreement does not contain such a schedule, the certified local health agency shall provide the data upon completion of the project.

(c) The certified local health agency shall recognize the limitations in the accuracy of the digital data layers provided by the Department under N.J.A.C. 7:1H-18.2(b), as documented in the Department's

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Data Dictionary. The certified local health agency shall not use the digital data layers in a manner that is inconsistent with the accuracy limitations.

(d) The certified local health agency shall ensure that the coordinate reference system remains intact during any reproduction or manipulation of the digital data layers provided by the Department under N.J.A.C. 7:1H-18.2(b).

7:1H-18.4 Data protection standards

(a) The certified local health agency shall not reproduce or redistribute digital data received from the Department for use by anyone other than the certified local health agency without first obtaining express written permission from the Department. This restriction does not apply to the distribution of printed mapped information produced from the digital data.

(b) The certified local health agency shall credit the Department's Geographic Information System as the source of the data for any maps, publications, reports, or other documents produced which utilize department digital data. The certified local health agency shall include the following statement on any such maps, publications, reports or other documents: "This (map, publication, report, or other document, as applicable) was developed, in part, using the Department's Geographic Information System digital data, in conjunction with the certified local health agency's work, but this secondary product has not been verified by the department and is not State-authorized."

(c) The certified local health agency shall follow the Department's "Digital Data Standards" document in the development of new data to assure quality geographic data appropriate for use on a Geographic Information System.

(d) The certified local health agency shall ensure that digital data received from the Department is used solely by the certified local health agency, its employees, agents and independent contractors and only for activities of the certified local health agency under the Act and this chapter.

(e) The certified local health agency shall not allow any person outside the certified local health agency to have possession of such digital data except pursuant to a written agreement containing the following requirements:

1. The person shall comply with all the requirements of this section;

2. The person shall not use, reproduce, or redistribute the data for any purpose other than the work specified in the contract between the person and the certified local health agency; and

3. After completing the work specified in the contract, the person shall return to the certified local health agency all copies of Department digital data provided to the person in connection with the contract.

(f) The certified local health agency shall not allow any person outside the certified local health agency to obtain possession of digital data provided by the Department without first entering into the agreement described in (e) above.

(g) The certified local health agency shall submit to the Department a copy of all agreements with any person using digital data obtained from the Department.

7:1H-18.5 Reporting

In lieu of the monthly reporting required under N.J.A.C. 7:1H-4.2, the certified local health agency shall provide the Department with a semi-annual written report documenting the status of the GIS development in the certified local health agency's geographic jurisdiction. The certified local health agency shall include in the report the status of the GIS projects agreed to in the grant contract under N.J.A.C. 7:1H-20.

SUBCHAPTER 19. ENVIRONMENTAL HEALTH PERFORMANCE STANDARDS FOR PILOT PROGRAMS

7:1H-19.1 General performance standards for administering a pilot program

(a) A certified local health agency may administer a pilot program, to the extent authorized in its certification. The certified local health agency's authority to administer the pilot program expires on the expiration date of the certification.

(b) A certified local health agency conducting a pilot program shall do so in accordance with the following:

1. The statutes and rules applicable to the subject matter of the pilot program, as designated in the certification;

2. The performance standards of general applicability set forth in N.J.A.C. 7:1H-4; and

3. The standards set forth in this subchapter.

(c) The certified local health agency shall not undertake any enforcement action until after consulting with the Department on the specific enforcement case and receiving the Department's approval of the proposed enforcement action.

(d) The certified local health agency shall investigate allegations of illegal or noncomplying activities brought to the attention of the agency by the Department, by citizen complaints, or by other sources. Within the amount of time allotted in the certification, the certified local health agency shall inspect the location at which the suspected activity is occurring or has occurred.

7:1H-19.2 Supervision of pilot program by the Department

(a) The certified local health agency shall provide the Department with prior notice of its inspections and investigations, as required under the certification. The Department may supervise inspections and investigations undertaken by the certified local health agency. The certified local health agency shall take such action as the Department directs in the course of such inspections and investigations.

(b) The Department may supervise legal proceedings commenced by a certified local health agency in connection with a violation. The certified local health agency shall take such action as the Department directs in the course of such proceedings.

7:1H-19.3 Reporting of information related to productivity of pilot program

(a) In the monthly reports required under N.J.A.C. 7:1H-4.2, the certified local health agency shall include the following information:

1. A list of the persons performing work on the pilot program;

2. The duties of each person listed in (a)1 above;

3. The number of hours each person listed in (a)1 above has spent in connection with the pilot program; and

4. The total number of staff hours spent by the certified local health agency on each investigation, inspection or enforcement action.

SUBCHAPTER 20. GRANTS

7:1H-20.1 Procedures for applying for grant

(a) A certified local health agency may apply to the Department for a grant for the provision of environmental health services, pursuant to the procedures set forth in this section.

(b) Though the Department may make more than one announcement of availability of grant funds for a given calendar year, a single application by the applicant for that calendar year is sufficient to put the applicant under consideration for all grant awards to be made in that calendar year.

(c) The applicant shall include the following information in the grant application:

1. The name, address and telephone number of the applicant;

2. The name, address and telephone number of the individual designated by the applicant as its principal contact in connection with the grant generally;

3. The name, address and telephone number of the individual designated by the applicant as its principal contact in connection with the fiscal matters;

4. The applicant's vendor I.D. number assigned to the applicant by the State Department of the Treasury;

5. The date on which the applicant became a certified local health agency;

6. If the applicant has executed any interagency agreements with the Department governing the performance of environmental health services by the applicant, the date each such agreement was executed;

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7. A budget setting forth the following:

i. The applicant's total projected expenditures in each area of environmental health services, the portion of such expenditures projected to be funded through a grant, and the portion of such expenditures projected to be funded through other sources;

ii. For each area of environmental health services, the portions of the applicant's total projected grant expenditures to be expended in the categories of personnel, consultants, audit, and other expenditures;

iii. For each area of environmental health services, the outputs that the applicant expects to perform and the projected cost of each category of outputs;

iv. The total revenue resources projected for each area of environmental health services, and the portion of such revenues anticipated from grant monies awarded under this subchapter, other State sources, Federal sources, county sources, fees, penalties, and other sources;

v. The balance, as of the time of the application, of the applicant's EQEF and of any other fund containing monies from fees, fines, penalties or other sources that the applicant collects or receives in performing environmental health services; and

vi. For each category of budgeted expenditure (such as personnel, consultants, audits and other costs), an itemization of the amount budgeted for each program, the priority of the expenditure for each program within each budget category, and the funding source (grant funds or county funds) for each expenditure;

8. A narrative description of each area of environmental health services to be performed by the applicant, including the following:

i. An assessment of the need for environmental health services in addition to or different than what is described in the work program;

ii. A description of the applicant's objectives in addressing the needs assessed in the work program or in (c)8i above;

iii. A description of the applicant's methods to evaluate and attain the objectives described in (c)8ii above;

iv. A projection of the applicant's output of environmental health services, which specifically identifies any areas in which the projected output exceeds an output required under the applicant's certification or under the applicable performance standards; and

v. A ranking of all of the outputs identified in (c)8iv above, in order of the applicant's priorities;

9. A description of any undertakings listed in the notice of eligibility of grant funds published under N.J.A.C. 7:1H-20.3 as being eligible for non-matching grants, for which the applicant seeks a non-matching grant pursuant to N.J.A.C. 7:1H-20.5. The applicant shall include in the description all of the information required under (c)7 and 8 above; and

10. The following certification, signed by a person authorized to sign grant documents on behalf of the applicant: "I certify that I have personally examined and am familiar with the information supplied in this application and attachments, and that to the best of my knowledge and belief, after diligent investigation including inquiry of those individuals immediately responsible for obtaining the information, the information contained in this claim is true, accurate and complete. I further certify that every person performing work in any area of environmental health services on behalf of [insert name of certified local health agency] has all training required under this chapter for such work. I further certify that the submission of this application and attachments to the Department has been duly authorized by the governing body of [insert political subdivision of which applicant is a part]."

(d) By January 30 of the year following the submission of the grant application, the applicant shall inform the Department of the balance as of the preceding December 31 in the applicant's EQEF and of any other fund containing monies from fees, fines, penalties or other sources that the applicant collects or receives in performing environmental health services.

7:1H-20.2 Annual grant conference

(a) The Department shall conduct a grant conference in the third quarter of each calendar year, in accordance with this section.

(b) Any certified local health agency, and any county department or other local health agency that has applied for certification as a certified local health agency pursuant to N.J.A.C. 7:1H-2, may attend the grant conference.

(c) At the grant conference, the Department shall:

1. Discuss the priorities for the provision of environmental health services in the following calendar year;

2. Discuss changes that have occurred since the previous grant conference in state statutes concerning environmental health, in rules promulgated thereunder, in the Act and in this chapter, that are relevant to the grant process or to the provision of environmental health services by certified local health agencies;

3. Discuss Department initiatives and pilot programs relevant to the provision of environmental health services by certified local health agencies; and

4. Review procedures for applying for grants, and provide attendees with grant application forms.

7:1H-20.3 Announcement of availability of grant funds

(a) The Department shall publish in the New Jersey Register each year a notice of availability of grant funds for the following calendar year, as required under N.J.S.A. 52:14-34.4.

(b) The Department shall include in the notice the information required under N.J.S.A. 52:14-34.4.

(c) In stating the total mount of money available in the grant program, the Department shall include the following information:

1. The dollar amount of the General Fund appropriation made available for matching grants, and the dollar amount of the General Fund appropriation made available for non-matching grants, if any;

2. A description of the other sources of money that the Department expects to become available for matching grants to be awarded during the following calendar year as authorized by the appropriations act, and an estimate of the amount expected to be available from each such source;

3. The amount of money available in the non-matching grant fund; and

4. A description of the other sources of money that the Department expects to be deposited in the non-matching grant fund and available to be awarded during the following calendar year.

(d) In addition to the information required under N.J.S.A. 52:14-34.4, the Department shall include the following additional information in the notice published under (a) above:

1. The subject matter of any pilot programs for which grant funds are available;

2. The subject matter of any activities for which non-matching grants are available; and

3. The Department's stated priorities for the provision of environmental health services in the following calendar year.

(e) After the Department determines the dollar amount of money actually available from sources other than those described in (c)1 above, the Department shall publish in the New Jersey Register a supplemental notice stating that dollar amount.

7:1H-20.4 Eligibility for matching grant

(a) An applicant is not eligible for a matching grant unless it satisfies all of the requirements listed in (a)1 through 6 below:

1. The applicant is a certified local health agency;

2. The applicant has submitted a complete application for a grant under N.J.A.C. 7:1H-20.1;

3. The Department has received the application within 30 days after publication of the notice described in N.J.A.C. 7:1H-20.3(a);

4. The undertaking for which the grant is made is within the scope of the applicant's certification, and consistent with all of the following:

i. The applicant's work program submitted under N.J.A.C. 7:1H-2.1(a);

ii. Any interagency agreements between the applicant and the Department, governing the performance of environmental health services by the applicant; and

iii. All applicable Federal and State statutes, rules and regulations, and all applicable areawide water quality, air quality, solid waste or

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other applicable management plan adopted pursuant to law and approved by the Commissioner; and

5. The amount of the grant is no more than 50 percent of the cost of the undertaking for which the grant is made, unless the Department determines that the undertaking is eligible for a non-matching grant under N.J.A.C. 7:1H-20.5.

7:1H-20.5 Non-matching grants

(a) The Department may provide a non-matching grant to a certified local health agency pursuant to this section.

(b) An applicant is eligible for a non-matching grant only if:

1. The applicant includes in its application pursuant to N.J.A.C. 7:1H-20.1 a description of the undertaking to be funded by the non-matching grant as required by N.J.A.C. 7:1H-20.1(c)10;

2. The undertaking is within the scope of the applicant's certification;

3. The non-matching grant is to be used only for new programs or expanded programs, or for development of technical and administrative procedures and protocols, training and personnel development, special projects and equipment, or other similar purposes approved by the Commissioner;

4. The undertaking that the applicant proposes is listed in the notice of availability of grant funds published under N.J.A.C. 7:1H-20.3 as being eligible for a non-matching grant;

5. Sufficient revenues to fund the undertaking are available in the non-matching grant fund;

6. The applicant and the undertaking to be funded by the non-matching grant satisfy all of the requirements of N.J.A.C. 7:1H-20.4, other than the requirement that the amount of the grant be no more than 50 percent of the cost of the undertaking; and

7. Based upon the factors listed in N.J.A.C. 7:1H-20.6(c)1 through 11, the Department determines that the making of the non-matching grant best serves the purposes of the Act as stated in N.J.S.A. 26:3A2-22.

7:1H-20.6 Amount of grant; issuance of letter of intent

(a) The Department shall make matching grants to certified local health agencies in two stages each year. Stage I of the matching grants is an apportionment of the General Fund appropriation made available for grants under the Act, and of other monies available for grants before the Stage I grant is issued. Stage II of the matching grants is an apportionment of all other monies made available to the Department for grants under the Act.

(b) The Department shall apportion the monies available for Stage I and Stage II grants among eligible applicants and undertakings, based upon some or all of the following factors as applied to each undertaking listed in the grant application:

1. The nature and extent of the work outputs to be produced as a result of the undertaking;

2. The extent to which each undertaking serves the applicant's program objectives as set forth in its work program under N.J.A.C. 7:1H-2.1(a);

3. The priorities of the program objectives served by each undertaking, as such priorities are set forth in the work program under N.J.A.C. 7:1H-2.1(a);

4. The importance and appropriateness of each undertaking, in light of the following:

i. The Statewide priorities for the provision of environmental health services;

ii. The extent to which such priorities are being served in the applicant's area of jurisdiction pursuant to some authority other than the Act or this chapter (for example, the extent to which a designated county lead agency under the Right to Know Act is providing services that the applicant proposes to perform);

iii. The characteristics of the applicant's area of jurisdiction, including, for example, the rural, urban or coastal nature of the county, the distribution of population throughout the county, and the nature and location of environmentally sensitive areas (as defined at N.J.A.C. 7:1E-1.8) and industrial areas in the county;

iv. The extent to which the applicant has documented that the residents of its geographic jurisdiction, industries and facilities located within the geographic jurisdiction, other government entities located within the geographic jurisdiction, and representatives of environmental groups support the undertaking; and

v. With respect to any opposition expressed by persons listed in iv above, the extent to which the applicant has effectively answered such opposition;

5. The importance of each undertaking in meeting the time schedule for full program implementation, as such time schedule is set forth in the work program under N.J.A.C. 7:1H-2.1(a);

6. The consistency of each undertaking with applicable Federal and State statutes, rules and regulations, and with any areawide water quality, air quality, solid waste or other applicable management plan adopted pursuant to law and approved by the Commissioner;

7. The total cost of each undertaking, and the portion of that total cost comprised by capital expenditures and by operating expenses. The Department may give preference to undertakings that require lesser capital expenditures, especially when funds descried in (b)9 below are available to fund capital expenditures;

8. The applicant's record of satisfying the administrative standards, the performance standards, and other requirements of this chapter and the Act, and the extent to which each undertaking is necessary to maintain or improve that record;

9. The extent to which the applicant has funds available from sources other than grants, such as its EQEF or any other fund containing monies from fees, fines, penalties or other sources that the applicant collects or receives in performing environmental health services;

10. The amount of the applicant's total grant award, and the proportionality of that amount to the amounts to be awarded to other certified local health agencies; and

11. Such other factors that the Department determines are relevant to furthering the goals of the Act.

(c) For each applicant that the Department has determined is eligible for a non-matching grant pursuant to N.J.A.C. 7:1H-20.5, the Department shall determine the amount of the grant based upon:

1. Any or all of the factors listed in (b)1 through 11 above; and

2. The total amount expected to be available from the non-matching grant fund, as described in N.J.A.C. 7:1H-20.3(c)3 and 4.

(d) After determining that an applicant is eligible for a grant pursuant to N.J.A.C. 7:1H-20.4 and/or 20.5, the Department shall issue a letter of intent stating the following:

1. That the Department intends to award the applicant a Stage I grant, in the amount determined under (b) above;

2. Whether the Department intends to award the applicant a Stage II grant, and if so, the amount of the grant determined under (b) above;

3. If the Department has apportioned any non-matching grant funds to the applicant pursuant to (c) above, that the Department intends to award the applicant a non-matching grant in the apportioned amount; and

4. A list of the expenditures for which the applicant may use the amounts listed in (d)1, 2 and 3 above.

(e) No statement by the Department (in the letter of intent issued under (d) above or in any other context) shall constitute an agreement to make any of the grants listed in the letter of intent. The Department will not be deemed to have agreed to make a grant until all of the following contingencies for that particular grant (referred to below as the subject grant) have occurred:

1. The governing body of the applicant's jurisdiction adopts a resolution that:

i. Authorizes the applicant to enter into a grant agreement for the subject grant, pursuant to N.J.A.C. 7:1H-20.7; and

ii. Authorizes an individual to execute the grant agreement on behalf of the applicant;

2. The applicant and the Department execute and deliver a grant agreement for the subject grant in accordance with N.J.A.C. 7:1H-20.7, or execute and deliver an amendment to an existing grant agreement encompassing the subject grant; and

3. The Department has available sufficient funds that it is legally authorized to disburse for the subject grant.

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7:1H-20.7 Terms and conditions for receipt of grant

(a) The amount of any matching grant made under this subchapter shall not exceed 50 percent of the cost of any undertaking for which the grant is made. This condition shall not apply to non-matching grants.

(b) The Department and the recipient of the grant shall execute and deliver a grant agreement approved by the Department and containing provisions governing the following subjects:

1. The name, address and other identifying information regarding the grantee;

2. A description of the work to be funded by the grant, including without limitation specific work outputs to be produced by the grantee, and standards and procedures governing the performance of the work;

3. The time period during which the grantee will perform the work funded by the grant;

4. A requirement that the grantee comply with all applicable laws, including without limitation the Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. and the Law Against Discrimination, N.J.S.A. 10:5-1 et seq., and regulations promulgated under the authority of such laws;

5. Requirements for administration of grant funds, including without limitation restrictions upon types of expenditures that can be made, overtime costs and travel expenditures;

6. A requirement for the grantee to maintain insurance policies for comprehensive general liability, comprehensive automobile liability and worker's compensation, with such liability limits and other terms and conditions as the Department determines are reasonably necessary to adequately address the potential for liability arising from the work funded by the grant, a requirement to submit evidence of such insurance annually, and a requirement for the grantee to indemnify the State for liabilities, costs and expenses arising from acts or omissions of the grantee;

7. A prohibition of the assignment or transfer of any part of the grantee's interest in the grant agreement;

8. A prohibition of subcontracting or subdelegating any of the grantee's duties under the Act, this chapter or the grant agreement without the Department's prior express written approval;

9. An exculpation of the State from liability for any claim arising in connection with insufficient funds to make the grant in its full amount;

10. Procedures for procurement of supplies, equipment and services with grant funds;

11. Standards for management, use and disposition of equipment and other property that is furnished by the Department or paid for from grant funds or other State or Federal funds;

12. Standards and conditions for the making of disbursements, including without limitation the following:

i. That the grantee has satisfied all reporting requirements under this chapter, the grantee's certification, and the grant agreement;

ii. That the Department will not disburse more than 90 percent of the grant amount before the grantee has completed all work funded by the grant;

iii. That the grantee has made a written request for the disbursement satisfying the requirements of (c) below;

iv. That the Department has received the written request for the disbursement no later than 60 days after the end of the time period specified in (b)3 above;

13. Procedures for verifying compliance with matching and/or cost-sharing requirements;

14. Procedures for accounting for income obtained by the grantee through activities supported by the grant;

15. Requirements for maintaining a financial management system that accurately, currently and completely discloses the financial results of activities supported by the grant;

16. Requirements for financial and performance reporting, including without limitation periodic comparisons of expenditures against the grant budget, periodic comparisons of performance results against objectives listed in the grant agreement, and final reports of expenditures and performance;

17. Requirements for the grantee to monitor its performance of activities funded by the grant, and to report favorable or unfavorable circumstances, conditions and events affecting the grantee's performance;

18. Consent by the grantee to Department site visits, access to records and audits;

19. Agreement by the grantee to undertake remedial measures directed by the Department as needed to raise the grantee's performance to the levels required under the grant agreement;

20. Procedures and standards for audits;

21. Procedures and standards for modification of the grant agreement, including without limitation modifications to the budget, changes in the scope of the grantee's activities funded by the grant, and reductions in the grant amount;

22. Procedures and standards for determining that the grantee has completed all of its duties under the grant agreement;

23. The Department's remedies for a failure by the grantee to complete all of its duties under the grant agreement within the allotted time, as specified in (d) below;

24. Requirements for retention of records;

25. Procedures for obtaining Department approval or authorization of actions requiring such authorization or approval;

26. Requirements for demonstration of the grantee's authority to enter into the grant agreement;

27. Requirements for depositing advance payments into interest-bearing accounts;

28. Requirements for the grantee to pay interest along with the repayment of disallowed costs;

29. If the certified local health agency is to receive grant funds to perform inspections, investigations or other environmental health services at a frequency or level greater than that required under the applicable environmental health performance standard or under the certified local health agency's certification, requirements for the increased frequency or level;

30. A statement that the grant agreement cannot be modified except by written instrument executed by the Department; and

31. Such other provisions as are reasonably necessary to provide for proper administration and use of grant funds and to otherwise fulfill the purposes of the Act.

(c) The grantee shall make all requests for grant disbursements in writing. The grantee shall include the following in the request:

1. A State invoice form identifying the grantee, describing the expenditure for which the grantee is requesting the disbursement, and setting forth such other information as is necessary for administrative processing of the request;

2. A demonstration that the expenditure described under (c)1 above is authorized under the grant agreement;

3. For any expenditure of more than $5,000, an invoice, bill, receipt or payroll records evidencing the expenditure; and

4. If the grant in question is a matching grant, evidence that the grantee has contributed the required percentage of the expenditure.

(d) This subsection sets forth the Department's remedies if the grantee fails to perform all of its duties under the grant agreement within the time allotted under the grant agreement. In selecting the appropriate remedy, the Department will consider the number of duties that the grantee has failed to perform, the materiality of those duties, the extent to which the grantee has failed to perform them, and any consequences that have resulted. The Department may exercise any or all of the following remedies, provided that the selection of one or more remedies shall not preclude the later exercise of any other remedies:

1. Amending the grant agreement to allow the grantee additional time to complete its performance of its duties;

2. Suspending disbursements under the grant agreement;

3. Terminating the grant agreement;

4. Requiring repayment of all or part of the grant monies disbursed;

5. Requiring repayment to the Department of the fair market value of any tangible or intangible property that the Department provided to the certified local health agency in connection with activities funded by the grant monies;

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6. Making the grantee wholly or partially ineligible for grants in one or more succeeding years; and
7. Suspending or revoking the grantee's certification.

SUBCHAPTER 21. ENVIRONMENTAL HEALTH ORDINANCES

7:1H-21.1 Authority for environmental health ordinances

(a) Any of the persons listed in (b) below may, in accordance with N.J.S.A. 26:3A2-27, formulate, adopt, amend, repeal and enforce environmental health ordinances to control air pollution, solid waste, hazardous waste, noise, pesticides, radiation or water pollution, to protect workers and the public from hazardous substances and toxic catastrophes, or to protect against any other threat to environmental health for which authority has been delegated pursuant to N.J.S.A. 26:3A2-28 and N.J.A.C. 7:1H-2.2(b), within the territorial area of the certified local health agency.

(b) Any of the following persons may formulate, adopt, amend, repeal and enforce environmental health ordinances under (a) above:

1. A county board with, or that is, a certified local health agency;
2. A municipal board of health with, or that is, a certified local health agency;
3. A regional health commission with, or that is, a certified local health agency;
4. The governing body of any county or municipality with a certified local health agency, which county or municipality has no board of health and is not a member of a regional health commission.

7:1H-21.2 Consistency of environmental health ordinances with other laws, regulations and plans

Environmental health ordinances shall be consistent with all applicable Federal and State statutes, rules and regulations, and with any areawide water quality, air quality, solid waste or other applicable management plan adopted pursuant to law and approved by the Commissioner.

7:1H-21.3 Procedure for approval of environmental health ordinances

(a) Except as provided in (d) below, environmental health ordinances shall be mailed to the Commissioner, within five working days after adoption. If the ordinance has not been mailed to the Commissioner within five working days after adoption, for the purposes of (b) below the ordinance will be deemed to have been adopted on the date that is five working days before the date of receipt by the Commissioner. The ordinance shall be mailed to the Commissioner at the following address:

Department of Environmental Protection
Office of Legal Affairs
Attention: Environmental Health Ordinances
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

(b) Except as provided in (d) below, an environmental health ordinance shall take effect on the date which is 90 days after the date of adoption, unless the Commissioner disapproves the ordinance before that date.

(c) In disapproving an environmental health ordinance under (b) above, the Commissioner may set forth the changes which, if incorporated into the ordinance, would make the revised ordinance eligible for resubmission and review under (a) and (b) above.

(d) All model ordinances developed by the Commissioner are set forth at N.J.A.C. 7:1H, Appendix A. If a person listed in N.J.A.C. 7:1H-21.1(b) adopts such an ordinance in full and without alteration, such ordinance shall take effect immediately, and shall not be required to be mailed to or reviewed by the Commissioner.

(e) A person listed in N.J.A.C. 7:1H-21.1(b) may adopt an environmental health ordinance which is more stringent than the Federal or State statute, rule, regulation or management plan upon which it is based, provided that the Federal or State statute, rule, regulation, or management plan allows for the adoption of more stringent ordinances. If any conflict exists between an environmental health ordinance and any Federal or State statute, rule, regulation, permit or management plan which does not expressly allow for the adoption of more stringent ordinances, the Federal or State statute, rule, regulation, permit or management plan shall control.

(a)

ENFORCEMENT

Air Administrative Procedures and Penalties

Proposed Readoption with Amendments: N.J.A.C. 7:27A

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-1 et seq. and 26:2C-1 et seq., particularly 26:2C-8 and 26:2C-19.

DEP Docket Number: 38-94-04/101.

Proposal Number: PRN 1994-498.

A **public hearing** concerning this proposal will be held on:

Thursday, October 6, 1994 at 10:00 A.M.
New Jersey Department of Environmental Protection
401 East State Street
Public Hearing Room (1st floor)
Trenton, New Jersey 08625

Submit written comments, identified by the DEP Docket Number given above, by October 14, 1994 to:

Janis Hoagland, Esq.
Department of Environmental Protection
Office of Legal Affairs
CN 402
Trenton, New Jersey 08625-0402

The proposed amendments will become operative 60 days after adoption by the Commissioner (see N.J.S.A. 26:2C-8).

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Air Administrative Procedures and Penalties rules, N.J.A.C. 7:27A, are scheduled to expire on December 4, 1994. The New Jersey Department of Environmental Protection (Department) has reviewed these rules and determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated and proposes to readopt the chapter with minor changes to N.J.A.C. 7:27A-3.8, 3.9, 3.10 and 3.11 that will make penalties reflect more accurately the particular circumstances and severity of violations. The readoption of N.J.A.C. 7:27A is necessary to ensure continued enforcement of the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq. and the federal Clean Air Act, 42 U.S.C. 7401 et seq.

This summary first describes the substantive provisions of each section in N.J.A.C. 7:27A proposed for readoption. Then the proposed amendments to N.J.A.C. 7:27A-3.8, 3.9, 3.10 and 3.11 are discussed. Finally, the Department's several outstanding proposals to amend N.J.A.C. 7:27A apart from this readoption are noted and briefly described.

Section Summary

Subchapters 1 and 2 of N.J.A.C. 7:27A are reserved. Subchapter 3 contains procedural rules for the assessment, payment, and appeal of civil administrative penalties, as well as rules setting forth the penalties for specific air pollution control violations.

N.J.A.C. 7:27A-3.1 describes the scope and purpose of subchapter 3. N.J.A.C. 7:27A-3.2 defines terms used throughout the subchapter. N.J.A.C. 7:27A-3.3 describes the Department's process for assessing penalties for violations of the Air Pollution Control Act and identifies when payment of a penalty is due. N.J.A.C. 7:27A-3.4 sets forth the procedures for requesting an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment (NOCAPA).

N.J.A.C. 7:27A-3.5 identifies in general terms how the Department determines civil administrative penalties for air pollution violations and sets forth the range and limit of such penalties. This section also sets forth the factors that the Department may consider in determining the penalties for air pollution violations.

N.J.A.C. 7:27A-3.6 establishes civil administrative penalties for submitting inaccurate or false information in any application, registration,

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record or other document that is required to be maintained or submitted under the air pollution control program rules. N.J.A.C. 7:27A-3.7 establishes civil administrative penalties for failure to allow lawful entry and inspection. N.J.A.C. 7:27A-3.8 establishes civil administrative penalties for failure to pay a fee when due. N.J.A.C. 7:27A-3.9 establishes civil administrative penalties for the nonsubmittal or the failure to maintain records of any smoke, emission or stack data, or any test data, or any other records or information required by the Department.

N.J.A.C. 7:27A-3.10 establishes civil administrative penalties for violations of rules adopted under the New Jersey Air Pollution Control Act, N.J.S.A. 26:26C-1 et seq. A table at N.J.A.C. 7:27A-3.10(e) (proposed for recodification to N.J.A.C. 7:27A-3.10(g) herein) identifies, by subchapter and provision of N.J.A.C. 7:27, the civil administrative penalty amount that the Department may assess for each offense. Penalty amounts depend on the frequency of the offense; in some cases, the amount of actual emissions; the percent exceedance of the allowable emissions; the type of source; and the nature of air contaminant emitted. N.J.A.C. 7:27A-3.10 also establishes the Department's authority to revoke the violator's certificate to operate or variance.

N.J.A.C. 7:27A-3.11 establishes the maximum civil administrative penalties for failure to notify the Department of releases of air contaminants in violation of N.J.S.A. 26:2C-19(e). N.J.A.C. 7:27A-3.12 provides that the Department may assess a penalty equal to the economic benefit which the violator has realized as a result of not complying with or by delaying compliance with the requirements of the New Jersey Air Pollution Control Act, or any rule, administrative order, operating certificate or permit issued thereunder. This economic benefit penalty assessment may be levied in addition to the civil administrative penalty levied for the violation, subject to specified limits.

Proposed Amendments

N.J.A.C. 7:27A-3.8: The Department is proposing to amend N.J.A.C. 7:27A-3.8, which currently provides that a civil administrative penalty equal to the unpaid fee (up to a maximum of $10,000) is assessed for the first offense of failure to pay a fee. A civil administrative penalty of two times the unpaid fee (up to a maximum of $25,000) and three times the unpaid fee (up to a maximum of $50,000) may be assessed for the second and third offense, respectively. In accordance with the enabling statute, N.J.A.C. 7:27A-3.8 also provides that each day a fee is not paid shall constitute an additional offense. Accordingly, under the current rule, a violator can incur a maximum daily civil administrative penalty of up to $10,000 for the nonpayment of a fee.

The Department is proposing to amend the rule so that a first offense violator will be assessed a base penalty of the greater of one third of the unpaid fee or $50.00. A second offense will be assessed at the greater of a base penalty equal to two thirds of the unpaid fee or $100.00, and a third or subsequent offense will be assessed at the greater of the unpaid fee or $150.00. Additionally, the daily penalty for continuing nonpayment of a fee after notice by the Department of the nonpayment will be 0.1 percent of the base penalty. Finally, the rule is being amended so that a second, third and subsequent offense will be the nonpayment of any second, third and subsequent fee, respectively, required by N.J.A.C. 7:27 to be paid by a facility owner or operator and due in the same calendar year as the pending offense.

N.J.A.C. 7:27A-3.9: The Department is proposing to amend N.J.A.C. 7:27A-3.9, which currently provides that the Department may assess a civil administrative penalty of $5,000 for the first offense, $10,000 for the second offense, $30,000 for the third offense and $50,000 for the fourth and subsequent offenses against a violator who fails to provide the Department with emission, smoke, stack or test data or who fails to maintain such records. Additionally, the current penalty provision is structured so that the penalties are the same for failure to provide any records, data or information regardless of the severity of the offense.

The provision is being amended to reduce the penalties as follows. Failure to submit or maintain records regarding smoke, opacity or emission data will result in a penalty assessment ranging from $2,000 for the first offense to $8,000 for the fourth and subsequent offenses. Failure to submit or to maintain records regarding all other test or stack data will result in a penalty assessment ranging from $1,000 for the first offense to $4,000 for the fourth and subsequent offenses. Failure to submit or to maintain any other records will result in a penalty assessment ranging from $500.00 to $2,000. These rules are being amended to clarify that the penalty applies to the nonsubmittal or nonmaintenance of opacity data. Opacity is a physical property of some emissions and the requirement to collect such data is a condition of some permits. The rule is also being amended to clarify that it will apply only when none of the specific penalties in N.J.A.C. 7:27A-3.10 is applicable to the violation.

N.J.A.C. 7:27A-3.10: In accordance with N.J.S.A. 26:2C-19(b), N.J.A.C. 7:27A-3.10 currently provides that the maximum penalty amount for a violation of N.J.A.C. 7:27-5.2 is the statutory maximum of not more than $10,000 for a first offense, not more than $25,000 for the second offense, and not more than $50,000 for the third and each subsequent offense. The provision currently allows the Department to reduce the maximum penalty amount by a certain percentage based upon the specified factors of remedial measures taken and magnitude of the problem. Magnitude of the problem is subdivided into population affected, nature of air contaminant, amount of air contaminant emitted in one hour, area covered by the contaminant and off-site property damage.

This proposed amendment to N.J.A.C. 7:27A-3.10(e)5 establishes an appropriate penalty assessment for violations of N.J.A.C. 7:27-5.2 such as emissions of certain odors, which do not cause, or do not have the potential to cause, injury or environmental harm. A new penalty provision provides a separate penalty for those violations of N.J.A.C. 7:27-5.2 that occur as a result of the emission of air contaminants in such quantities and duration as unreasonably interfere with the enjoyment of life or property. The current penalty provision is being amended so that it applies only to those violations of N.J.A.C. 7:27-5 which are, or have the potential to be, injurious to human health or the environment.

The proposed amendments provide additional credit for the violator's implementation of remedial measures. The current rule allows for a 15 percent reduction from the maximum penalty for full implementation of remedial measures and a 10 percent reduction for partial implementation. The proposed amendments allow for a 15 percent reduction for the implementation of immediate measures to mitigate the effects of a violation, and an additional 20 percent reduction for the implementation of measures to prevent future violations or an additional 10 percent reduction for the implementation of measures that only partially prevent future violations. These adjustments for implementation of measures to prevent future violations are intended to further encourage the timely and effective implementation of remedial measures. "Magnitude of the problem" factors are not being amended and may also be applied to reduce the penalty. However, this section does not provide for a penalty reduction of more than 95 percent of the maximum penalty. The Department reserves the right to assess the statutory maximum civil administrative penalty for releases of substances which cause persons exposed to the release to suffer acute health effects resulting in death or permanent disabilities.

The proposed penalties for violations which unreasonably interfere with the enjoyment of life or property establish a base penalty amount of $1,000 for the first offense, $2,000 for the second offense, $5,000 for the third offense, and $15,000 for the fourth and each subsequent offense. The base penalty is increased or decreased based on remedial measures taken and the magnitude of the problem. The "magnitude of the problem" factor is subdivided into population affected and nature of contaminant categories. A person who releases an air contaminant under this provision is assessed a penalty where there is a complainant who is able to verify that the release unreasonably interfered with the complainant's enjoyment of life or property. The severity of the violation is based on the number of verified complaints. Unlike the existing provision, the proposed amendment does not consider the amount of an air contaminant emitted in one hour because the amount of an air contaminant emitted does not necessarily correspond to the severity of this kind of a violation, such as the emission of odor.

The Department is also proposing to further reduce the base penalty by 50 percent for the first violation where an odor or other violation of N.J.A.C. 7:27-5.2 results in the unreasonable interference with the enjoyment of life or property and the equipment or activity causing the violation is being operated or conducted in compliance with all air pollution control permits and certificates, except for the general prohibition against odors and other violations of N.J.A.C. 7:27-5. In proposing this one-time additional reduction the Department recognizes that a permittee, otherwise operating in accordance with a permit or certificate issued by the Department, may not be aware that control or abatement measures not specifically required by the permit or certificate may be necessary to prevent the emission of odors and other violations of N.J.A.C. 7:27-5.2 which unreasonably interfere with the enjoyment of

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life or property. However, after the initial violation the permittee is on notice that additional measures are necessary and therefore, the 50 percent reduction does not apply to subsequent violations.

These potential decreases and/or increases from the base penalties for remedial measures taken and magnitude of the problem will result in the assessment of penalties in the range of $150.00 to $1,400 for the first offense, $1,300 to $2,800 for the second offense, $3,250 to $7,000 for the third offense and $9,750 to $21,000 for the fourth and each subsequent offense.

The Department believes that the important policy goal of mitigating the environmental harm caused by a violation of the Act and preventing future interference with the public's enjoyment of life and property will be fostered by these changes. The Department further believes that these adjustments will lead to greater long-term compliance because of the greater incentive to take remedial measures that is built into the proposed amendments.

The proposed changes in N.J.A.C. 7:27A-3.10(e)5 were prompted, in part, by issues raised by the Middlesex County Utility Authority et al. in a petition for rulemaking submitted to the Department in 1992. See Notice of Receipt of Petition for Rulemaking, 24 N.J.R. 1642(c). The petition requested, in part, that the Department develop a zero- to five-level scale to grade the severity of odors and that level zero to two would not constitute a violation for public entities. The Department is not adopting this approach for the reasons it set forth in its Notice of Action on the Petition. See 24 N.J.R. 3764(b). The Department stated in the Notice of Action, however, that it would incorporate a five-level scale into the rules for purposes of determining the severity of an odor and the corresponding civil administrative penalty. At the time, the Department believed that linking the severity of an odor to the amount of a penalty would enhance the fairness of penalty assessments. The Department, however, has since re-evaluated its position and decided that, for the reasons articulated below, it will not adopt a five-level odor scale or calculate the amount of civil administrative penalties based upon the severity of an odor.

Although the Department initially believed that the incorporation of odor severity in the calculation of penalties would result in more fair and equitable penalty assessments, it has determined that the five-level odor scale currently used by inspectors investigating odor complaints is too subjective to be relied upon for calculating the amount of a penalty. Moreover, the Department is unable to refine this odor scale to include sufficiently objective criteria to be used to calculate the amount of a penalty.

The inspectors use the five-level scale to verify the intensity of an odor when investigating a complaint. When used for this purpose, the subjective nature of the scale does not present significant problems of reliability or fairness. Currently, neither liability nor the amount of a penalty is determined based on the scale. The severity of an odor is part of the Department's proof that an odor has unreasonably interfered with the enjoyment of life or property, the statutory standard for establishing a violation. The primary basis for establishing that a violation has occurred is not the application of the scale, but the assertion by one or more complainants that an odor unreasonably interfered with their enjoyment of life or property, supported by the Department's determination of the presence and source of the odor.

Further, the severity of an odor is not subject to reliable measurement. Ambient odor is "fleeting in nature and at any one point on the ground, can vary by several orders of magnitude. Variation in wind direction, velocity, turbulence, humidity, and temperature complicate [the measurement of an odor]." (Byrd and Phelps, Odor and Its Measurement, in Air Pollution, Vol. 2, Analysis, Monitoring and Surveying, 2d ed. (A. Stern, ed., Academic Press, 1968 at pp. 305, 307.)) Accordingly, the Department has determined that neither the five-level scale specifically nor the consideration of the severity of an odor generally should be used as the basis for the assessment of penalties under this chapter.

N.J.A.C. 7:27A-3.11: The Department is proposing to amend N.J.A.C. 7:27A-3.11, which establishes the maximum civil administrative penalty that may be assessed for failure to notify the Department of releases of air contaminants in violation of N.J.S.A. 26:2C-19(e) of the New Jersey Air Pollution Control Act. The maximum penalty amounts are being reduced from $10,000 to $2,000 for the first offense, $25,000 to $4,000 for the second offense, $50,000 to $10,000 for the third offense and $50,000 to $30,000 for the fourth and each subsequent offense. The current penalty provision allows the Department to reduce the maximum penalty by a certain percentage based upon the magnitude of the problem and the implementation of remedial measures. The Department no longer considers the magnitude of the problem and remedial measures taken to be relevant in the penalty determination for this violation. Therefore, these reduction factors are being eliminated in the proposed amendments to this section.

The Department has determined that N.J.A.C. 7:27A-3.11 as it is currently structured does not adequately provide for the penalty assessment for violations of N.J.S.A. 26:2C-19(e) that do not pose a potential threat to public health, welfare or the environment. Therefore, a new penalty provision is being proposed to provide a separate penalty for those violations of N.J.S.A. 26:2C-19(e) that result from a failure of the violator to immediately notify the Department of a release of air contaminants in a quantity or concentration which may reasonably result in citizen complaints. The proposed maximum penalty amounts are $200.00 for the first offense, $400.00 for the second offense, $1,000 for the third offense and $3,000 for the fourth and each subsequent offense. The current penalty provision is being amended so that it applies only for failure to notify the Department of those releases of air contaminants in a quantity or concentration which pose a potential threat to public health, welfare or the environment.

Summary of Pending Proposals

As of the publication of this proposal to readopt N.J.A.C. 7:27A, the Department has pending several other proposals that amend the chapter. These are described below. Any changes to N.J.A.C. 7:27A adopted through the following rulemakings prior to the readoption of this chapter will be incorporated into the readopted rules.

1. Control and Prohibition of Mercury Emissions, proposed on February 22, 1994 at 26 N.J.R. 1050(a). These proposed changes to the air penalty rules establish civil administrative penalties in N.J.A.C. 7:27A-3.10(e)27 for violations of concurrently proposed N.J.A.C. 7:27-27 which sets new limits on mercury emissions from municipal solid waste incinerators. The penalty amounts proposed take into account the health and environmental impacts of each violation, deterrence, and consistency with existing penalties for similar violations.

2. Enhanced Inspection and Maintenance Program, proposed on August 15, 1994 at 26 N.J.R. 3258(b). This proposal adds civil administrative penalties in N.J.A.C. 7:27A-3.10(e)15 for violations of N.J.A.C. 7:27-15.5, concerning the sale or offering for sale of emission control defeat devices, and for the offering for sale of vehicles with emission control systems which have been tampered with. Currently, the penalty rule in N.J.A.C. 7:27A-3.10(e)15 contains penalties for actual sale of vehicles which have been tampered with. The proposed penalties for offering such vehicles for sale are the same as the current penalties for their actual sale. The proposed penalties for sale and offering for sale of emission control defeat devices are also identical to the current penalties for sale of vehicles which have been tampered with.

3. Emission Statements, proposed on September 7, 1993 at 25 N.J.R. 4033(a). This proposal amends existing penalties in N.J.A.C. 7:27A-3.10(e)21 for failure to keep proper records and failure to certify an annual emissions statement, and makes the penalties consistent with existing penalties for other similar violations of N.J.A.C. 7:27. In addition, the proposal establishes civil administrative penalties for the violation of a proposed new provision of N.J.A.C. 7:27-21, which requires persons who the Department has identified as subject to emission statement requirements to submit a statement of nonapplicability if they are, in fact, not subject to those requirements.

4. Air Administrative Penalties and Requests for Adjudicatory Hearings, proposed on September 7, 1993 at 25 N.J.R. 4045(a). This proposal adds civil administrative penalties in N.J.A.C. 7:27A-3.10(e)22 for violations of the concurrently proposed new operating permit program rules at N.J.A.C. 7:27-22, which are required by Title V of the Federal Clean Air Act. In addition, the proposal adds penalties for violations of previously adopted amendments to N.J.A.C. 7:27-8, which contains rules regarding permits to construct and certificates to operate air pollution control equipment, and provisions concerning the proper installation and operation of continuous monitoring systems, including continuous emissions monitors. The proposal provides a new and reduced penalty schedule for violations detected by continuous emissions monitors. The proposal also amends N.J.A.C. 7:27A-3.2, Definitions; 7:27A-3.5, Civil Administrative Penalty Determinations, General; and 7:27A-3.10, Civil Administrative Penalties for Violations of Rules Adopted pursuant to the Air Pollution Control Act.

Social Impact

The proposed readoption with amendments of N.J.A.C. 7:27A will have a positive social impact because it will continue to encourage

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compliance and discourage noncompliance with the State's air pollution control laws and regulations and the Federal Clean Air Act requirements. Failure to readopt these penalty rules would result in a State air pollution control program with no regulatory enforcement mechanism.

The general public health will benefit from the continued improvement in air quality which will result from compliance by facilities with emission standards and other permit requirements. Readoption will help ensure that ground level ozone is controlled through lower emissions of volatile organic compounds and oxides of nitrogen, both ozone precursors. In addition, persons causing odor air contamination will continue to be penalized, thus continuing to protect the public health and environment from unnecessary harm or the unreasonable interference with the enjoyment of life or property.

The readoption will also enable the Department to comply with Federal Clean Air Act regulations, which require states to have air pollution control programs with an adequate enforcement mechanism. Failure to meet minimum Federal requirements will result in costly sanctions, including some cessation of Federal highway funding in New Jersey. By continuing to encourage compliance with the Department's air pollution control program, the readoption will also enable the Department to meet Federally mandated emission reduction commitments set forth in the existing New Jersey State Implementation Plan. Again, failure to meet such requirements would result in Federal sanctions with significant negative impacts on the State.

Economic Impact

The proposed readoption with amendments of N.J.A.C. 7:27A will have no economic impact on persons complying with the air pollution control rules. For violators, the economic impact of the readoption with amendments will vary according to the severity of the air pollution exceedance or other violation. The amendments to N.J.A.C. 7:27A-3.8 and 3.9 will potentially decrease the penalty that violators will be required to pay, provided that the violator comes into compliance relatively quickly once notified by the Department of a violation. The revised and new penalty matrices under N.J.A.C. 7:27A-3.10 may decrease the potential civil administrative penalty liability of a violator. The revised and new matrices will also more closely link the conduct of a violator to the amount of a penalty assessed and thereby allow the Department to focus upon those mitigating factors that are most likely to lead to long term compliance. The new penalty matrix under N.J.A.C. 7:27A-3.10 will decrease the potential penalty that violators will be required to pay for emission of air contaminants that interfere with the enjoyment of life or property. The revised and new penalty matrices under N.J.A.C. 7:27A-3.11 may decrease the civil administrative penalty liability of a violator for failure to notify the Department of a release of air contaminants.

If an effective compliance program is not maintained, air quality improvements required under the Federal Clean Air Act will not be achieved. This could trigger additional regulatory programs to meet air quality standards that would likely have significant and costly impacts on the public as well as the regulated community.

Environmental Impact

The proposed readoption with amendments of N.J.A.C. 7:27A will have a positive environmental impact because the rules set up a strong deterrent to violating State air emission standards and other air pollution control permit requirements. The continued control of air pollution will protect the environment and the health, welfare, and the property of New Jersey citizens.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments impose no reporting or recordkeeping requirements. Small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., found in violation of N.J.A.C. 7:27 will incur the penalties established under these rules. The information submission requirements and deadline for requesting an adjudicatory hearing to contest a penalty apply to all noticed for violations. Requesters will incur the administrative costs of preparing and submitting the request, and may employ legal representation. Lower penalties may be assessed for certain violations at sources with lower allowable emission limits. Sources operated by small businesses generally have lower allowable emission limits, thereby reducing the financial impact on small businesses due to penalties. Lesser requirements or exceptions are not provided upon business size to ensure a fair, efficient and effective penalty scheme.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:27A.

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

7:27A-3.8 Civil administrative penalty for failure to pay a fee

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

(c) [The amount of the civil administrative penalty for offenses described in this section shall be in an amount equal to the unpaid fee, up to a maximum of $10,000 for the first offense, two times the unpaid fee up to a maximum of $25,000 for the second offense, and three times the unpaid fee up to a maximum of $50,000 for the third and each subsequent offense.] **To assess a civil administrative penalty pursuant to this section:**

1. The Department shall identify the civil administrative base penalty pursuant to (d) below; and

2. The civil administrative penalty shall be the base penalty unless adjusted pursuant to (e) below.

(d) [The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.] **The base penalty shall be as follows:**

1. An amount equal to one-third of the unpaid fee or $50.00, whichever is greater, for the nonpayment of a fee due in any calendar year; or

2. An amount equal to two-thirds of the unpaid fee or $100.00, whichever is greater, for the nonpayment of a second fee in the same calendar year as in (d)1 above, but not the same fee as in (d)1 above; or

3. An amount equal to the unpaid fee or $250.00, whichever is greater, for the nonpayment of a third and each subsequent fee due in the same calendar year as in (d)1 above, but not the same fee as in (d)1 or 2 above.

(e) Failure to pay a fee within 30 days of receipt by the violator of notice of the nonpayment from the Department shall be considered a continuing violation. For a continuing violation, the Department may increase the amount of the base penalty calculated pursuant to (d) above by the amount obtained by multiplying the base penalty dollar amount by 0.1 percent for each day that the fee is past due.

7:27A-3.9 Civil administrative penalty for failure to provide information or test data or to maintain a permanent record of information or test data

(a) The Department may assess a civil administrative penalty against each violator who fails to provide the Department with **or who fails to maintain a permanent record of information regarding** smoke, **opacity, or** emission[, stack or] **data;** any other [information or] **stack or** test data; **or any other records or information** required by the Department pursuant to the Act or any rule, administrative order, operating certificate, registration requirement or permit issued pursuant thereto [or who fails to maintain for five years a record of smoke, emission, stack or any other information or test data required to be kept pursuant to the Act or any rule, administrative order, operating certificate, registration requirement or permit issued pursuant thereto].

(b) Each day [information or] **smoke, opacity or emission data; any other stack or** test data; **or any other records or information required by the Department pursuant to the Act or any rule, administrative order, operating certificate, registration requirement or permit issued pursuant thereto** is not provided after it is due, **or is not maintained,** shall constitute an additional, separate and distinct offense.

(c) [Notwithstanding] **Except as provided in** N.J.A.C. 7:27A-3.10, the amount of the civil administrative penalty for offenses described in this section shall be [$5,000 for the first offense, $10,000 for the second offense, $30,000 for the third offense, and $50,000 for the fourth and each subsequent offense.] **as follows:**

1. For the nonsubmittal of or the failure to maintain records of any smoke, opacity or emission data:

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i. $2,000 for the first offense;
ii. $4,000 for the second offense;
iii. $10,000 for the third offense; and
iv. $30,000 for the fourth and each subsequent offense.
2. For the nonsubmittal of or the failure to maintain records of any stack or test data not included in (c)1 above:
i. $1,000 for the first offense;
ii. $2,000 for the second offense;
iii. $5,000 for the third offense; and
iv. $15,000 for the fourth and each subsequent offense.
3. For the nonsubmittal of or the failure to maintain any records or information not included in (c)1 or 2 above:
i. $500 for the first offense;
ii. $1,000 for the second offense;
iii. $2,500 for the third offense; and
iv. $7,500 for the fourth and each subsequent offense.
(d) (No change.)

7:27A-3.10 Civil administrative penalties for violation of rules adopted pursuant to the Act

(a) The Department may assess a civil administrative penalty of not more than $10,000 for the first offense, not more than $25,000 for the second offense, and not more than $50,000 for the third and each subsequent offense for each violation of the Act or of any rule promulgated pursuant to the Act listed in [(e)]**(g)** below.

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

(e) For any violation of N.J.A.C. 7:27-5.2 where the emission of air contaminants is in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life or property, the assessed penalty shall in no case be reduced by more than 95 percent of the maximum civil administrative penalty pursuant to (g)5 below, or shall in no case exceed the maximum civil administrative penalty set forth at N.J.S.A. 26:2C-19(b).

(f) For any violation of N.J.A.C. 7:27-5.2 where the emission of air contaminants is in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life or property, the Department may, in its discretion, assess the maximum civil administrative penalty set forth at N.J.S.A. 26:2C-19(b) for any release of air contaminants that causes persons exposed to the release to suffer acute health effects resulting in death or serious personal injury.

[(e)]**(g)** The Department shall determine the amount of the civil administrative penalty for offenses described in this section on the basis of the provision violated and the frequency of the violation. Footnotes 3, 4, and 8 set forth in this subsection are intended solely to put violators on notice that in addition to any civil administrative penalty assessed the Department may also revoke the violator's operating certificate or variance. These footnotes are not intended to limit the Department's discretion in determining whether or not to revoke an operating certificate or variance, but merely indicate the situations in which the Department is most likely to seek revocation. The number of the following subsections corresponds to the number of the corresponding subchapter in N.J.A.C. 7:27.

1.-4. (No change.)

5. The violations of N.J.A.C. 7:27-5, Prohibition of Air Pollution, and the civil administrative penalty amounts for each violation, per source, are set forth in the following tables:

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-5.2(a), **the emission of air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life or property**				
Maximum Penalty per Violation	$10,000[7]	$25,000[7]	$50,000[7]	$50,000[7]
i. The [Maximum] **maximum** penalty may be reduced by applying the following factors:				
(1) Remedial Measures Taken[:]				
[(a)[(**A**) [Yes] **Immediate implementation of measures to effectively mitigate the effects of the violation:**	[–]15% Reduction from **the** [Maximum] **maximum penalty**			
[(b)[(**B**) [Partial] **Implementation of measures that can reasonably be expected to prevent a recurrence of the same type of violation**	[–10% Reduction from Maximum]			
1. Full implementation	**20% Reduction from the maximum penalty**			
2. Partial implementation	**10% Reduction from the maximum penalty**			
[(c) None	–0% Reduction from Maximum]			
(2) Magnitude of Problem				
[(a)](**A**) Population Affected				
Less than three complainants:	[–]20% Reduction from **the** [Maximum] **maximum penalty**			
Three to five complainants:	[–]15% Reduction from **the** [Maximum] **maximum penalty**			
Six to [ten] **10** complainants:	[–]5% Reduction from **the** [Maximum] **maximum penalty**			
Greater than 10 complainants:	[–]0% Reduction from **the** [Maximum] **maximum penalty**			
[(b)](**B**) Nature of Air Contaminant[:][9]				
Particulates & other air contaminants:	[–]15% Reduction from **the** [Maximum] **maximum penalty**			
VOC [or AAQS], **NO_x or other criteria pollutant:**	[–]5% Reduction from **the** [Maximum] **maximum penalty**			
EHS, TXS or NESHAPS:	[–]0% Reduction from **the** [Maximum] **maximum penalty**			
[(c)](**C**) Amount of Air Contaminant Emitted in Any One Hour				
Less than 22.8 pounds:	[–]15% Reduction from **the** [Maximum] **maximum penalty**			
22.8 pounds or greater:	[–]0% Reduction from **the** [Maximum] **maximum penalty**			

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[(d)](D) Area Covered (Air contaminant)	
Less than ½ square mile:	[–]15% Reduction from **the** [Maximum] **maximum penalty**
½ square mile or greater:	[–]0% Reduction from **the** [Maximum] **maximum penalty**
[(e)](E) Off-site Property Damage	
No:	[–]15% Reduction from **the** [Maximum] **maximum penalty**
Yes:	[–]0% Reduction from **the** [Maximum] **maximum penalty**

[7]For instance, for the first offense, if the violator takes remedial measures to [reduce or eliminate] **mitigate** the **effects of the** violation, the Department may reduce $1,500 (15%) from the maximum penalty. **Further, if the violator takes measures that can reasonably be expected to prevent a recurrence of the same type of violation, the Department may reduce an additional $2,000 (20%) from the maximum penalty.** Further, if there are less than three complainants related to the violation the Department may reduce an additional $2,000 (20%) from the maximum penalty. Further, if an air contaminant emitted is not a VOC, [AAQS,] NO_x, **criteria pollutant,** EHS, TXS, or NESHAPS the Department may reduce an additional $1,500 (15%) from the maximum penalty. Further, if the air contaminant emitted is less than 22.8 pounds in any one hour to the atmosphere the Department may reduce an additional $1,500 (15%) from the maximum penalty. Further, if the air contaminant emitted into the atmosphere covers an area of less than ½ square mile, the Department may reduce an additional $1,500 (15%) from the maximum penalty. Further, if there is no off-site property damage from the air contaminant the Department may reduce an additional $1,500 (15%) from the maximum penalty. **Summing the total penalty reduction percentages results in a total reduction of 115%. However, an assessed penalty may not be reduced by more than 95% of the maximum penalty;** [Therefore] **therefore**, the maximum reduction for the first offense penalty of $10,000 would be $9,500 resulting in an assessed penalty of $500.00.

[9]VOC (N.J.A.C. 7:27-16)
EHS (N.J.A.C. 7:31-1)
[AAQS (N.J.A.C. 7:27-13)]
NO_x (N.J.A.C. 7:27-19) Criteria pollutant (N.J.A.C. 7:27-13)
TXS (N.J.A.C. 7:27-17)
NESHAPS (40 CFR 61)

Citation	**First Offense**	**Second Offense**	**Third Offense**	**Fourth and Each Subsequent Offense**
N.J.A.C. 7:27-5.2(a), the emission of air contaminants in such quantities and duration as would unreasonably interfere with the enjoyment of life or property and which are not, or do not tend to be, injurious to health or welfare, animal or plant life or property				
Base Penalty per Violation	**$1,000[1]**	**$2,000[1]**	**$5,000[1]**	**$15,000[1]**
i. The base penalty may be reduced or increased by applying the following factors, as applicable. The civil administrative penalty for each violation is calculated by summing the base penalty and the increase or decrease from the base penalty for each of the applicable factors in i(1) through (4) below.				
(1) Remedial Measures Taken				
(A) Immediate implementation of measures to effectively mitigate the effects of the violation:	**15% Reduction from the base penalty**			
(B)1 Implementation of measures that can reasonably be expected to prevent a recurrence of the same type of violation				
1. Full implementation	**20% Reduction from the maximum penalty**			
2. Partial implementation	**10% Reduction from the maximum penalty**			
(2) Population Affected				
(A) Three to five complainants:	**10% increase to the base penalty**			
(B) Six to 10 complainants:	**15% increase to the base penalty**			
(C) Greater than 10 complainants:	**20% increase to the base penalty**			
(3) Nature of Air Contaminant[2]				
(A) VOC, NO_x or other criteria pollutant:	**15% increase to the base penalty**			
(B) EHS, TXS or NESHAPS:	**20% increase to the base penalty**			
(4) Compliance History				
(A) Upon a showing by a violator within 14 calendar days of receipt of the notice of violation from the Department that, at the time of the pending violation:				
1. The violator was in full compliance with the terms and conditions of all Department permits and certificates related to the pending violation:				

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2. The violator was in full compliance with all air pollution control permits and certificates for the facility where the violation is pending, except for the violation of N.J.A.C. 7:27-5.2(a) and N.J.A.C. 7:27-8.3(j); and	
3. The pending violation is the first violation of N.J.A.C. 7:27-5.2(a) for the facility within the five calendar years immediately preceding the date of the pending violation:	**50% reduction from the base penalty**

[1]For instance, for the first offense, if the violator takes immediate remedial measures to mitigate the violation, the Department may reduce $150.00 (15%) from the base penalty. Further, if the violator takes measures that can reasonably be expected to prevent a recurrence of the same type of violation, the Department may reduce an additional $200.00 (20%) from the base penalty. Further, if there are less than three complainants related to the violation there is no increase to or reduction from the base penalty. Further, if an air contaminant emitted is not a VOC, AAQS, EHS, TXS, or NESHAPS there is no increase to or reduction from the base penalty. Further, if this is the first violation of N.J.A.C. 7:27-5.2(a) for the facility within five years immediately preceding the date of the pending violation and the violator can demonstrate that it was in full compliance with the terms and conditions in all Department permits and certificates related to the pending violation and with all air pollution control permits and certificates, the Department may reduce an additional $500.00 (50%) from the base penalty. Therefore, the minimum assessed penalty for the first offense under this section would be $150.00. In this example, all of the reductions were taken to the fullest extent to result in the minimum penalty.

[2]VOC (N.J.A.C. 7:27-16)
EHS (N.J.A.C. 7:31-1)
NO_x (N.J.A.C. 7:27-19)
Criteria pollutant (N.J.A.C. 7:27-13)
TXS (N.J.A.C. 7:27-17)
NESHAPS (40 CFR 61)

6.-25. (No change.)

7:27A-3.11 Civil administrative penalty for violations of N.J.S.A. 26:2C-19(e)

(a) The Department shall determine the amount of the civil administrative penalty for violations in this section on the basis of the provision violated and the frequency of the violation as follows:

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.S.A. 26:2C-19(e), **failure to immediately notify the Department of release of air contaminants in a quantity or concentration which poses a potential threat to public health, welfare or the environment**	**$2,000**	**$4,000**	**$10,000**	**$30,000**
[Maximum Penalty per Violation	$10,000[1]	$25,000[1]	$50,000[1]	$50,000[1]

The Maximum penalty may be reduced by applying the following factors:

(1) Remedial Measures Taken:	
(a) Yes	–15% Reduction from Maximum
(b) Partial	–10% Reduction from Maximum
(c) None	–0% Reduction from Maximum
(2) Magnitude of Problem	
(a) Population Affected	
Less than three complainants	–20% Reduction from Maximum
Three to five complainants	–15% Reduction from Maximum
Six to ten complainants	–10% Reduction from Maximum
Greater than 10 complainants	–0% Reduction from Maximum
(b) Nature of Air Contaminants[2]	
Particulates & other air contaminants	–15% Reduction from Maximum
VOC or AAQS	–5% Reduction from Maximum
EHS, TXS or NESHAPS	–0% Reduction from Maximum
(c) Amount of Air Contaminant Emitted in Any One Hour	
Less than 22.8 pounds	–15% Reduction from Maximum
22.8 pounds or greater	–0% Reduction from Maximum

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(d) Area Covered (Air Contaminant)

Less than ½ square mile	–15% Reduction from Maximum
½ square mile or greater	–0% Reduction from Maximum

(e) Off-site Property Damage

No	–15% Reduction from Maximum
Yes	–0% Reduction from Maximum

[1]For instance, for the first offense, if the violator takes remedial measures to reduce or eliminate the violation, the Department may reduce $1,500 (15%) from the maximum penalty. Further, if there are less than three complainants related to the violation the Department may reduce an additional $2,000 (20%) from the maximum penalty. Further, if an air contaminant emitted is not a VOC, AAQS, EHS, TXS, or NESHAPS the Department may reduce an additional $1,500 (15%) from the maximum penalty. Further, if the air contaminant emitted is less than 22.8 pounds in any one hour to the atmosphere the Department may reduce an additional $1,500 (15%) from the maximum penalty. Further, if the air contaminant emitted into the atmosphere covers an area of less than ½ square mile, the Department may reduce an additional $1,500 (15%) from the maximum penalty. Further, if there is no off-site property damage from the air contaminant the Department may reduce an additional $1,500 (15%) from the maximum penalty. Therefore, the maximum reduction for the first offense penalty of $10,000 would be $9,500 resulting in an assessed penalty of $500.00.

[2]VOC (N.J.A.C. 7:27-16)
EHS (N.J.A.C. 7:31-1)
AAQS (N.J.A.C. 7:27-13)
TXS (N.J.A.C. 7:27-17)
NESHAPS (40 CFR 61)]

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.S.A. 26:2C-19(e), failure to immediately notify the Department of release of air contaminants in a quantity or concentration which might reasonably result in citizen complaints, but which does not pose a potential threat to public health, welfare or the environment	**$100**	**$400**	**$1,000**	**$3,000**

HEALTH

(a)

CATASTROPHIC ILLNESS IN CHILDREN RELIEF FUND COMMISSION

Catastrophic Illness in Children Relief Fund Program

Proposed Readoption with Amendments: N.J.A.C. 8:18

Authorized By: Catastrophic Illness in Children Relief Fund Commission, Len Fishman, Chairman.
Authority: N.J.S.A. 26:2-148 et seq., specifically 26:2-159.
Proposal Number: PRN 1994-479.

Submit written comments by October 6, 1994 to:
Mary Ann Whiteman, Executive Director
Catastrophic Illness in Children Relief Fund Commission
New Jersey Department of Health
CN 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

In accordance with Executive Order No. 66(1978), N.J.A.C. 8:18 expires on November 6, 1994. This proposal serves to readopt rules covering the Catastrophic Illness in Children Relief Fund Program. Specific amendments to the rules are being proposed in order to further clarify eligibility requirements for applicant families and are based on the experience of the Commission to date in its review of applications for assistance.

Subchapter 1 identifies the eligibility criteria, application review and payment process for families applying for assistance for their children's extraordinary uncovered medical expenses. The Catastrophic Illness in Children Relief Fund Commission believes that the process defined and outlined in subchapter 1 has assisted and served the public's needs since the Commission first began reviewing applications in 1989. Therefore, the Commission fully supports the readoption of this rule and the proposed technical amendments.

Previously, the Commission has adopted amendments that have resulted in making the Program more accessible to New Jersey residents. This readoption further clarifies the Commission's practice in reviewing residency, transportation expenses and its initial consideration of purchasing health insurance for a family. Additionally, two amendments are proposed.

The Fund is intended to assist New Jersey families with their children's uncovered medical bills. In order to better inform New Jersey residents about this resource, the eligibility requirements pertaining to residency have been clarified in N.J.A.C. 8:18-1.3(c). The enabling statute clearly defines residency and states that seasonal or temporary residence of any duration does not constitute residency. Defining the rule that seasonal or temporary residence does not meet the residency requirement will assist in clarifying this aspect of the eligibility requirements for the public.

Since it first began reviewing applications for financial assistance, the Commission has considered transportation expenses. Most common is to provide reimbursement for families who have had to travel any distance for their child's medical care. Families routinely submit for mileage allowance, parking and toll expenses, and in some cases for airfare. Also recognizing that some families may purchase a vehicle, or lease or purchase specialized vehicles to accommodate a child's durable medical equipment (wheelchairs, walkers and other specialized equipment) the Commission reviews these expenses as well. The Commission supports the review of these expenses because it allows for a family to meet its needs for the care of a child.

In reviewing its current practice, the Commission has decided to clarify at N.J.A.C. 8:18-1.7 and 1.14 the frequency with which it would provide for financial assistance for vehicles. The Commission supports a one-time vehicle allowance of $25,000 per family for a vehicle lease or a purchase of a vehicle to meet a child's special needs. Although all vehicle expenses may be considered towards eligibility, reimbursement of these expenses will not exceed $25,000. Modification expenses, however, are outside of the allowance and may be submitted for subsequent review.

For a limited period, and on a trial basis, the Commission decided to offer a one year health insurance policy to selected families (see N.J.A.C. 8:18-1.16(c)). The coverage was in addition to each family's basic award approved by the Commission. The intent was to assist a family with the first year's expense of a premium and to obtain coverage for a family who otherwise would never have been able to purchase health insurance on their own. The coverage was intended to protect the Fund from future claims on behalf of a child if it appeared that

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the family would be reapplying for additional expenses. The only coverage available to families during this time had a one year pre-existing condition restriction. Only 15 families enrolled. After two years of experience, the Commission reviewed its practice in this area and determined that there was a minimal return to the Program in expenditures saved as a result of this coverage. Since there was an exclusion, the benefit to the family was minimal. No family was able to continue the premium on their own, due to the high cost of the premium.

With this in consideration, the Commission does not now support the purchase of a one year health insurance policy within this program. The Commission also believes that families may be able to access health insurance on a more readily available basis with the offerings through the Essential Health Services Commission, which will provide subsidies for non-group coverage at competitive prices. Additionally, other State reforms may now provide additional options for purchase of insurance.

Other technical amendments serve to clarify the cite of a particular rule and the correct zip code for the appeal process.

Social Impact

The proposed amendments enable the public to better understand the Commission's review of certain eligible health services.

The rules proposed for readoption are critical to New Jersey families whose children have experienced a catastrophic illness. Many families who are in financial crisis as a result of their child's condition are still unaware of the Program. However, for the more than 430 families who have received financial assistance, the Program has provided significant relief of their medically-related debt. As public awareness is increasing, the demand for the Program requires further clarification of program eligibility requirements. Public demand has incrased more than 400 percent since program inception and supports the need for this assistance for families overwhelmed in caring for an ill child.

Economic Impact

From December 1989, through June 1993, awards in amounts from $476.00 to $566,804 have been approved to assist applicant families with the expenses of their child's catastrophic illness. The Catastrophic Illness in Children Relief Fund is collected from more than 200,000 employers by the Department of Labor via an annual employer surcharge of $1.00 per employee, and is maintained by the Treasurer of the State of New Jersey. More than $9.7 million has been awarded to families from the Fund. The readoption has the benefit of further clarifying for the public the Commission's review of eligible and ineligible expenses.

The Commission continues to be interested in preserving the financial integrity of the Fund. Utilization of the Fund for appropriate and reasonable medical expenses will preserve the financial resources of the Fund for future applicants, while providing meaningful assistance to current applicant families in need.

The Commission fully supports its review and consideration of transportation expenses. The one time vehicle allowance of $25,000.00 will assist families with their initial financial burden pertaining to their daily transportation needs. Modifications to vehicles are considered additional to the vehicle allowance for the benefit of families caring for a chronically ill child. If necessary, families may submit for subsequent modifications in other applications to the program.

Eliminating the purchase of insurance will not have any impact on awards granted for families, since this was a benefit in addition to an award approved on behalf of a family.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.A.C. 52:14B-16 et seq. The rulemaking does not impact on small businesses because the proposed amendments pertain to the processing of applications and the amount of assistance a family may receive under N.J.A.C. 8:18.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:18.

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

8:18-1.3 General requirements

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

(c) To be eligible for assistance, a child must be a resident of the State of New Jersey. Resident means a person legally domiciled in New Jersey for a period of three months immediately preceding the initial date of application for assistance to the Fund.

1.-3. (No change.)

4. Seasonal residents in New Jersey are excluded from eligibility. **Seasonal or temporary residence within the State, of whatever duration, does not constitute domicile.** Migrant workers who can document a previous history of work in New Jersey are eligible for consideration.

8:18-1.7 Annual cap **and vehicle allowance**

(a) The amount of the Fund's disbursements on behalf of a child shall be capped at $100,000 per year.

(b) A one-time vehicle allowance will be capped at $25,000 for the purchase of a lease or a specialized vehicle. The allowance does not include modifications, which can be applied for separately. The one-time vehicle allowance of $25,000 shall be included in the total disbursement cap, in the year the vehicle allowance was disbursed.

8:18-1.14 Eligible health services

(a) Categories of incurred health expenses which are medically-authorized in the care of a child with an illness or condition eligible for consideration in assessing whether a family has reached its eligibility threshold of 15 percent of the first $100,000 of annual income of a family plus 20 percent of the excess income over $100,000 include, but are not limited to, the following:

1.-12. (No change.)

13. Purchase of a **specialized leased or** specialized, modified vehicle **and any subsequent modifications**; and

14. (No change.)

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

8:18-1.16 Administration of payments

(a) (No change.)

(b) Items in N.J.A.C. 8:18-[1.4] **1.14,** Eligible health services, shall be considered for payments.

[(c) When the Commission decides that a purchase of insurance may reduce the need for a family to reapply to the Fund in the next year, it shall consider to fund the purchase of insurance for one year.]

8:18-1.17 Appeal process

(a) The following applies to the appeals:

1. Upon receipt of a determination by the State Office, an applicant who disputes that determination may appeal to the Catastrophic Illness in Children Relief Fund Commission by filing a written appeal to:

New Jersey State Department of Health
Catastrophic Illness in Children Relief Fund Commission
John Fitch Plaza
CN 360
Trenton, New Jersey [08626-0360] **08625-0360**
Attn: State Commissioner of Health

2.-6. (No change.)

(b) (No change.)

(a)

COMMUNICABLE DISEASE CONTROL SERVICE

Notice of Public Hearing

Confinement of Persons with Tuberculosis

Proposed New Rules: N.J.A.C. 8:57-5

Take notice that the New Jersey State Department of Health is proposing to adopt new rules concerning the confinement of certain persons with tuberculosis. The proposal can be found in the August 15, 1994 issue of the New Jersey Register at 26 N.J.R. 3236(a). Comments on the proposal are being accepted until September 14, 1994. The rules address the need to control the spread of tuberculosis, especially the relatively new forms of drug resistant tuberculosis which are difficult and costly to treat.

A **public hearing** is scheduled for Monday, September 12, 1994, at 2:00 P.M., to be held at the Health and Agriculture Building, Auditorium (located on the first floor), John Fitch Plaza, Trenton, New Jersey.

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(a)

ENVIRONMENTAL HEALTH SERVICES

Assessment and Remediation of Lead Contamination Standards for Certification of Lead Abatement Workers, Supervisors, Inspectors and Project Designers

Proposed New Rules: N.J.A.C. 8:62

Authorized By: Len Fishman, Commissioner, Department of Health.

Authority: P.L. 1993, Chapter 288 and 15 U.S.C. 2601 et seq.

Proposal Number: PRN 1994-493.

Submit written comments by October 6, 1994 to:

Joseph D. Eldridge, M.P.H.
Research Scientist
Environmental Health Services
CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

Lead poisoning is the most prevalent environmental health problem facing children in New Jersey. The New Jersey Department of Health estimates that over 177,000 children under the age of five in New Jersey are at high risk of lead poisoning. Lead poisoning is caused by environmental exposure to lead and the most significant sources are lead-based paint and lead-laden dust and soil. Persons performing lead evaluations and abatement need to receive appropriate training to ensure that they conduct these activities in a safe and reliable manner.

On October 28, 1992, President Bush signed into law the Housing and Community Development Act of 1992, an omnibus housing bill, which includes as Title X the "Residential Lead-Based Paint Hazard Act of 1992". Title X establishes strict requirements for contractor certification and licensing, training-provider accreditation, laboratory licensing, and performance standards for testing and abatement products. State certification and licensing programs must meet minimum national standards; failure to act will result in the United States Environmental Protection Agency (U.S.E.P.A.) enforcing these requirements.

Title X formally authorizes the U.S. Department of Housing and Urban Development (H.U.D.) to issue grant awards for reducing lead-based paint hazards in low-income, privately-owned housing, both owner-occupied and rental units. New Jersey successfully competed for and was awarded $4.6 million dollars for this purpose. The Appropriations Act, which funded this grant, requires that all projects be "conducted by contractors certified and workers trained through a Federally-or-State-accredited program."

Pursuant to P.L. 1993, Chapter 288, the Department is proposing rules which establish standards for the permitting of lead abatement workers, lead abatement supervisors, lead inspector/risk assessors, and lead abatement planner/project designers. These rules were written with input from a committee consisting of representatives from those groups who will most likely be affected by these rules. Groups who were represented include the New Jersey Association of Realtors, New Jersey Builders Association, American Society of Home Inspectors-Garden State Chapter, Fidelity Environmental Insurance Company, New Jersey Apartment Association, Painter's District Council No. 10, Union County Legal Services, environmental consultants, Environmental and Occupational Health Sciences Institute, New Jersey Health Officers Association, National Environmental Health Association, United States Environmental Protection Agency, and the Department of Community Affairs.

These rules specify the educational and experiential requirements for each discipline, the application process to obtain a permit, the required training course and examination, and renewal procedures. Pursuant to these rules, each individual involved in the assessment and remediation of lead-containing materials or lead-contaminated materials must be permitted by the Department. These rules also establish certification standards for training providers and training courses which specify the curriculum for each discipline.

Reciprocity is available for those individuals who possess a valid permit, license or certification from another state which has received United States Environmental Protection Agency (U.S.E.P.A.) authorization to administer and enforce a state certification and training program.

Grandfathering will be available for those individuals who have received training recognized by the Department and have met the education and experiential requirements for that discipline, and have applied for certification within six months after the effective date of this rule.

Individuals and training agencies found to be out of compliance with these rules are subject to enforcement remedies, as well as civil administrative penalties as determined by the Department. Alleged violators are afforded an opportunity for a hearing pursuant to N.J.S.A. 52:14B-1 et seq. and Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.

N.J.A.C. 8:62-1 sets forth general provisions.

N.J.A.C. 8:62-2 defines the terms used throughout the chapter.

N.J.A.C. 8:62-3 sets forth the procedures and qualifications necessary to obtain or renew a permit as a lead abatement worker, lead abatement supervisor, lead inspector/risk assessor, and lead abatement planner/project designer.

N.J.A.C. 8:62-4 specifies the procedures required to obtain, maintain and renew certification as a training agency and for certification of training courses.

N.J.A.C. 8:62-5 sets forth the rules governing compliance and enforcement.

Social Impact

The permitting of lead abatement workers and lead abatement supervisors, upon successful completion of a certified training program, will reduce the public's exposure to hazards associated with lead abatement and ensure that lead abatement projects are performed by knowledgeable and competent workers in accordance with scientifically accepted work practices.

The permitting of lead inspector/risk assessors, upon successful completion of a certified training program, will ensure that buildings are inspected and evaluated for lead-containing and lead contaminated materials by appropriately trained and experienced professionals.

The permitting of lead abatement planners/project designers, upon successful completion of a certified training program, will ensure that lead abatement projects are designed by trained and competent professionals to effectively remediate lead-containing and lead-contaminated materials.

Building owners contracting with lead abatement professionals will be assured that evaluations for the presence of lead, and lead abatement projects or remedial actions are performed by individuals who have received appropriate training and have demonstrated the required level of competence.

The certification of training programs will assure permit applicants that successful completion of the training program will provide them with the information and skills necessary to evaluate, design, or perform lead abatement or remediation projects without endangering their own health or the health of other building occupants.

The public will be assured that lead abatement projects are completed by licensed individuals who possess the requisite knowledge and competence to evaluate the presence of lead-containing and lead-contaminated materials and to minimize the exposure of the public to the inherent dangers associated with lead abatement projects, thereby preventing lead-related diseases.

Economic Impact

Building owners will benefit from the assurance that they are paying qualified, competent, and knowledgeable permitted individuals to perform lead-related activities.

Permitted lead inspector/risk assessors, lead abatement planner/project designers, and lead abatement supervisors and workers will benefit from the elimination of unfair competition from unpermitted individuals performing lead activities in violation of regulatory requirements.

The public will benefit from reductions in wage loss, insurance, medical expenses, disability compensation payments and other costs resulting from lead-related disability.

Permit and certification fees are reasonable to offset administrative costs associated with the permitting and certification programs. Training providers applying for certification will be assessed a fee of $500.00 per discipline, which will result in an estimated net sum of $20,00.00 in the first year. Individuals will be assessed a permit fee of $80.00 for each worker, $150.00 for supervisor or inspector/risk assessor and $200.00 for planner/project designer resulting in an estimated net sum of $409,000 in the first year.

The costs incurred to comply with these rules are far less than the benefits set forth above. Training providers will benefit by these rules by establishing a program through which they can become certified to

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offer Department approved training courses and collect training fees from individuals participating in their courses. These rules will enhance opportunities for individuals participating in the State certification program by enabling them to perform lead-related activities required by Federal mandates, such as the mandatory disclosure of lead-based paint upon transfer of residential property. Provision of these courses will help meet the public demand for a well-trained workforce.

Regulatory Flexibility Analysis

These rules apply to lead inspector/risk assessors, lead planner/project designers, lead abatement supervisors, lead abatement workers, and lead training agencies, a majority of which are small business as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Previous experience with asbestos licenses, permits, and certificates issued under N.J.A.C. 8:60 and 12:120 indicates that reporting and recordkeeping requirements will not be significant, beyond those costs associated with day-to-day business activities. Additional professional services are not required in order to comply with this chapter.

The initial and annual costs of compliance are limited to the permit and certificate fee and the cost of any associated training or refresher course. Because of the risk associated with lead abatement projects and the need for competently trained inspector/risk assessors, planner/project designers, and workers, an exemption for small business would endanger the health, safety and welfare of the public. Therefore, no differentiation based on business size has been provided in the rules.

Full text of the proposal follows:

CHAPTER 62
STANDARDS FOR LEAD CERTIFICATION

SUBCHAPTER 1. GENERAL PROVISIONS

8:62-1.1 Title and citation

This chapter shall be known and may be cited as N.J.A.C. 8:62, Standards for Lead Certification.

8:62-1.2 Purpose

(a) The purpose of this chapter is to provide reasonable standards and procedures for:

1. Permitting of lead abatement workers for housing and public buildings;
2. Permitting of lead abatement supervisors for housing and public buildings;
3. Permitting of lead inspector/risk assessors;
4. Permitting of lead abatement planner/project designers;
5. Permitting of lead abatement workers for commercial buildings and superstructures;
6. Permitting of lead abatement supervisors for commercial buildings and superstructures; and
7. Certification of training agencies and courses for the above job classifications.

8:62-1.3 Scope

(a) This chapter shall apply to:

1. Examination and issuance of permits to lead abatement workers for housing and public buildings;
2. Examination and issuance of permits to lead abatement supervisors for housing and public buildings;
3. Examination and issuance of permits to lead inspector/risk assessors;
4. Examination and issuance of permits to lead abatement planner/project designers;
5. Examination and issuance of permits to lead abatement workers for commercial buildings and superstructures;
6. Examination and issuance of permits to lead abatement supervisors for commercial buildings and superstructures; and
7. Certification of training agencies and courses for the above job classifications.

SUBCHAPTER 2. DEFINITIONS

8:62-2.1 Definitions

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

"Abatement" means any set of measures designed to permanently eliminate or mitigate lead-based paint hazards in accordance with standards established by the Uniform Construction Code, N.J.A.C. 5:23 and includes, but is not limited to: the removal of lead-based paint and lead-contaminated dust; the containment or encapsulation of lead-based paint; the replacement of lead-painted surfaces or fixtures; the removal or covering of lead-contaminated soil; and all preparation, clean-up, disposal and post-abatement clearance testing activities associated with such measures.

"Applicant" means a person applying for certification as a lead abatement worker, a lead abatement supervisor, a lead inspector/risk assessor, a lead abatement planner/project designer, or an agency seeking certification to conduct lead training.

"Approved" means acceptable to the Commissioner of Health, in accordance with the requirements of this chapter.

"Certificant" means any training agency certified by the Department pursuant to N.J.A.C. 8:62-4.

"Commercial building" means any building used primarily for commercial or industrial activity, which is generally not open to the public, or occupied or visited by children, including but not limited to, warehouses, factories, storage facilities, aircraft hangers, garages, and wholesale distribution facilities.

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

"Department" means the New Jersey Department of Health.

"Discipline" means the classification of a specific lead-based paint activity. For example, lead abatement worker for housing and public buildings is a discipline.

"Hands-on assessment" means an evaluation which tests a trainees' ability to satisfactorily perform specified work practices and procedures.

"Housing" means a single family dwelling, including attached structures such as porches and stoops or a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, built prior to 1978, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

"Industrial hygienist" means a person certified by the American Board of Industrial Hygiene, 4600 West Saginaw, Suite 101, Lansing, MI 48917-2737 or an industrial hygienist in training, or an individual with equivalent education and experience.

"Interactive/participatory teaching methods" means instruction which consists of active participation of the trainees, such as, brainstorming, hands-on training, demonstration and practice, small group problem solving, discussions, risk mapping, field visits, walk-throughs, problem posing, group work assignments, question-and-answer periods, and role-playing sessions. Lecture is not considered an interactive/participatory teaching method.

"Instructor" means an individual who has the primary responsibility for organizing and delivering a particular course topic(s).

"Lead abatement planner/project designer" means any person who has completed a lead abatement planner/project designer training course approved by the Department and who has successfully passed the skills assessment for hands-on training and a written examination approved by the Department and who possesses a valid permit for such work issued by the Department.

"Lead abatement supervisor for commercial buildings and superstructures" means any person who has completed a lead abatement supervisor for commercial buildings and superstructures training course approved by the Department and who has successfully passed a skills assessment for hands-on training and a written examination approved by the Department and who possesses a valid permit for such work issued by the Department.

"Lead abatement supervisor for housing and public buildings" means any person who has completed a lead abatement supervisor for housing and public buildings training course approved by the Department and who has successfully passed a skills assessment of the hands-on training and a written examination approved by the Department and who possesses a valid permit for such work issued by the Department.

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"Lead abatement worker for commercial buildings and superstructures" means any person who has completed a lead abatement worker for commercial buildings and superstructures training course approved by the Department and who has successfully passed a skills assessment of the hands-on training and a written examination approved by the Department and who possesses a valid permit for such work issued by the Department.

"Lead abatement worker for housing and public buildings" means any person who has completed a lead abatement worker for housing and public buildings training course approved by the Department and who has successfully passed a skills assessment of the hands-on training and a written examination approved by the Department and who possesses a valid permit for such work issued by the Department.

"Lead inspector/risk assessor" means any person who has completed a lead inspector/risk assessor training course approved by the Department and who has successfully passed a skills assessment and a written examination approved by the Department and who possesses a valid inspector/risk assessor permit from the Department.

"Lead-based paint" means paint or other surface coating material that contains lead in excess of 1.0 mg/cm^2 or 0.5 percent by weight or by P.L. 102-550, Title X, the "Residential Lead-Based Paint Hazard Reduction Act of 1992", whichever is more stringent.

"Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-containing paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the Commissioner in these rules or by P.L. 102-550, Title X, the "Residential Lead-Based Paint Hazard Reduction Act of 1992", whichever is more stringent.

"Local health department" means the board of health of any region or municipality or the boards, body, or officers in such region or municipality lawfully exercising any of the powers of a local board of health under the laws governing such region or municipality.

"May" means that the action referred to is discretionary.

"N.J.A.C." means the New Jersey Administrative Code.

"N.J.D.C.A." means the New Jersey Department of Community Affairs.

"N.J.D.E.P." means the New Jersey Department of Environmental Protection.

"N.J.D.O.L." means the New Jersey Department of Labor.

"N.J.S.A." means the New Jersey Statutes Annotated.

"Public building" means any building or structure or part thereof, except housing, constructed prior to 1978 which is generally open to the public or occupied or visited by children, including but not limited to, museums, airports, hospitals, stores, public and private schools, daycare centers, and government facilities.

"Shall" means what the action referred to is mandatory.

"Superstructure" means a large steel or other industrial structure, such as a bridge or water tower, which may contain lead-based paint.

"Trainee" means any person who is enrolled in a lead abatement worker, lead abatement supervisor, lead inspector/risk assessor, or lead abatement planner/project designer course approved by the Department.

"Training curriculum" means a list of knowledge and skills that need to be taught in a certified training program for a particular discipline.

"Training hours" means the number of training hours devoted to discussion, learning activities, small group/work/activities, demonstrations, evaluations, and/or hands-on experience exclusive of lunch and break times.

"Training manager" means the individual responsible for administering the training courses and monitoring the performance of the instructors.

"Train-the-trainer course" means a 40 hour or longer course of study which provides instruction in the planning and teaching of adult education courses.

"U.S.E.P.A." means the United States Environmental Protection Agency.

SUBCHAPTER 3. REQUIREMENTS AND PROCEDURES FOR OBTAINING A LEAD PERMIT FOR LEAD ABATEMENT WORKER, LEAD ABATEMENT SUPERVISOR, LEAD INSPECTOR/RISK ASSESSOR, AND LEAD ABATEMENT PLANNER/PROJECT DESIGNER

8:62-3.1 Scope of the subchapter

This subchapter shall apply to each individual applying for or renewing a lead abatement worker, lead abatement supervisor, lead inspector/risk assessor, and lead abatement planner/project designer permit for housing and public buildings and to each individual applying for a lead abatement worker and lead abatement supervisor permit for commercial buildings and superstructures.

8:62-3.2 Requirements for obtaining a permit for lead abatement worker, lead abatement supervisor, lead inspector/risk assessor, and lead abatement planner/project designer

(a) Only permit applications meeting the requirements of this section may be approved by the Department.

(b) All permit applicants must be at least 18 years of age.

(c) All permit applicants shall successfully complete the requisite training course for that permit, which shall have been certified pursuant to N.J.A.C. 8:62-4. Each applicant required by this subchapter to complete lead training shall register at a training agency which has been certified by the Department pursuant to N.J.A.C. 8:62-4 to offer such training. A list of certified training providers is available from the Department.

(d) All applicants for lead inspector/risk assessor shall meet, at a minimum, the following education and experience requirements:

1. One year experience in a related field, (for example, asbestos, lead, environmental remediation work, construction-related health and safety inspection), and one of the following:

i. Bachelor's degree and one additional year of experience in a related field; or

ii. Certification as a sanitary inspector-grade 1, health officer, an industrial hygienist, an engineer, a registered architect, or an environmentally-related scientific field such as a environmental scientist; or

iii. A high school diploma, (or equivalent), and at least two additional years of experience in a related field.

(e) All applicants for supervisor for housing and public buildings shall meet, at a minimum, the following education and experience requirements:

1. A minimum of one year of experience as a lead abatement worker; and

2. A minimum of two years of experience in a related field or the construction trades.

(f) All applicants for supervisor for commercial buildings and superstructures shall meet, at a minimum, the following education and experience requirements:

1. A minimum of two years of experience in industrial painting; and

2. A minimum of 90 days of experience in field supervision or management in hazardous paint removal within the previous 24 months; and

3. Work experience demonstrating knowledge of relevant safety practices, waste handling procedures, and of environmental monitoring.

(g) All permit applicants shall successfully complete a skills assessment of the hands-on training and pass a written examination devised and administered under the approval of the Department.

1. Proof of passing the written examination shall be submitted to the Department with the permit application.

(h) Initial applicants must apply within one year of the completion date of their training course. Any permit applications pending in excess of one year shall be rejected.

(i) Permit applicants shall submit all applications, transcripts, diplomas, professional certifications, affidavits, and fees pursuant to N.J.A.C. 8:62-3.3.

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8:62-3.3 Procedures for completing permit application for lead abatement worker, lead abatement supervisor, lead inspector/risk assessor, and lead abatement planner/project designer

(a) The application for a permit shall be made on forms provided by the Department.

(b) The application for a permit shall be typewritten or neatly and legibly printed in ink.

(c) Each application shall be carefully and fully completed. Any incomplete application shall be rejected. Any fraud or misrepresentation on an application shall be grounds for automatic rejection and/or civil administrative penalties pursuant to N.J.A.C. 8:62-5.4.

(d) An applicant for a permit pursuant to this subchapter shall meet all the requirements specified in this subchapter.

(e) The initial and biennial renewal permit application fee are as follows:

1. Worker	$80.00
Supervisor	$150.00
Inspector/risk assessor	$150.00
Planner/Project designer	$200.00
Worker-commercial buildings and superstructures	$80.00
Supervisor-commercial buildings and superstructures	$150.00

2. The application fee shall be paid by certified check or money order made payable to the New Jersey Department of Health.

3. The application fee shall be non-refundable and shall be paid at the time the application is submitted.

4. No liability shall be assumed by the Department for the loss or delay in the transmission of the application fee.

(f) Each applicant shall submit a recent, passport-size, color photograph of the applicant against a white backdrop with the applicant's face not being less than three-quarters of an inch in width. The applicant shall not wear a hat, glasses or any other item which may alter or disguise the overall features of the face on the photograph. The applicants name and social security number shall be clearly printed on the back of the photograph.

(g) All permit applications shall be accompanied by sufficient documentation to demonstrate compliance by the applicant with the education and experience or professional certification requirements set forth at N.J.A.C. 8:62-3.2 (d) through (f). Acceptable documentation includes the following:

1. High school diploma or its equivalent;
2. College degree;
3. Resumes, letters of reference, proof of certification in another state, documentation of work experience, and copies of inspection reports;
4. Certificates from training courses or professional development courses; and
5. A signed, notarized statement by the applicant that the individual meets the applicable qualification.

(h) Applicants shall notify the Department of any change in address while the application is pending or after permit issuance. Any such notification shall be in writing and must reference the application number assigned by the Department.

8:62-3.4 Procedures for completing a reciprocal permit application for lead abatement worker, lead abatement supervisor, lead inspector risk assessor, and lead abatement planner/project designer

(a) All applicants for a reciprocal permit shall submit a complete application and application fee pursuant to N.J.A.C. 8:62-3.3.

(b) All applications made pursuant to this section shall include documentation of a current valid lead abatement worker, lead abatement supervisor, lead inspector/risk assessor, or lead abatement planner/project designer permit, certification, or license from another state which has received U.S.E.P.A. authorization to administer and enforce a state certification and training program under Title IV of the Toxic Substances Control Act.

8:62-3.5 Grandfathering of lead abatement workers, lead abatement supervisors, lead inspector/risk assessors and lead abatement planner/project designers

(a) All applicants for a grandfather permit shall submit a complete application and application fee pursuant to N.J.A.C. 8:62-3.3.

(b) An applicant who has received training from a training agency recognized by the Department is eligible for a permit, provided the following requirements are met:

1. Submission of documentation that the applicant has successfully completed a training course recognized by the Department;
2. Submission of documentation that the applicant meets the educational and experience requirements set forth at N.J.A.C. 8:62-3.2 (d) through (f);
3. Successful completion, within six months of the submission of the application of, a refresher training course certified by the Department; and
4. Successful completion of an examination devised and administered under the approval of the Department.

(c) Applicants eligible for a permit pursuant to this section shall have until six months after the effective date of this rule to apply for certification. Any applicant wishing to obtain a permit after the specified date, shall meet the requirements set forth at N.J.A.C. 8:62-3.2.

8:62-3.6 Issuance of permit

(a) A permit will be issued by the Commissioner to an applicant who has demonstrated compliance with all of the mandatory requirements of this subchapter.

(b) Each permit for a lead abatement worker, lead abatement supervisor, lead inspector/risk assessor and lead abatement planner/project designer shall be issued in writing, bear the Commissioner's signature, and shall contain:

1. The date of issuance;
2. The date of expiration;
3. The name of the permit holder;
4. The permit number; and
5. A photograph of the permit holder.

(c) The permit shall be valid, unless suspended or revoked pursuant to N.J.A.C. 8:62-3.8, for a period of two years from its date of issuance.

8:62-3.7 Identification of permit holder

(a) Each worker, supervisor, inspector/risk assessor or planner/project designer performing lead abatement or inspection activities shall have his or her permit available at the job site and readily available for inspection by representatives of the Department, N.J.D.C.A., N.J.D.O.L., N.J.D.E.P., and the local health department.

(b) Any permit which has been tampered with, altered, or defaced shall be void.

(c) Photostats, photographs or reproductions of a permit shall be invalid.

(d) Any permit holder who loses his or her permit or has it stolen shall immediately notify the Department in writing.

(e) A mutilated, lost, or stolen permit may be replaced after a review of the circumstances by the Commissioner. Replacement cost for the permit shall be $25.00.

1. A permit may only be replaced twice during the two-year term.
2. Applicants for replacement permits shall submit a notarized statement requesting the replacement which shall include:

i. The applicant's name, address, social security number, and permit number; and

ii. A statement concerning the circumstances surrounding the mutilation or loss of the permit and the date which it took place.

3. Permit replacement applications shall include two forms of identification.
4. Replacement applications for mutilated permits shall be accompanied by the worn permit.

8:62-3.8 Suspension or revocation of permit

(a) Any applicant or trainee may have his or her application denied and/or shall be required to pay the administrative penalties set forth at N.J.A.C. 8:62-5.4 for each violation listed below:

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1. Submitting false information on an application for an examination;
2. Submitting false information to gain entrance to an examination or training course;
3. Using fraudulent means during the taking of an examination;
4. Falsifying training records;
5. Submitting false information on an application for a permit;
6. Any violation of this chapter; or
7. Any good cause within the meaning and the purpose of the law.

(b) Any individual may have his or her permit suspended or revoked and/or shall be required to pay the administrative penalties set forth at N.J.A.C. 8:62-5.4 for each violation listed below:
1. Obtaining a permit through fraudulent means;
2. Performing work without a valid permit;
3. Incompetence;
4. Negligence;
5. Engaging in unsafe work practices pursuant to the Uniform Construction Code, N.J.A.C. 5:23, or acting in a manner which poses a health risk to others;
6. Falsifying reports;
7. Knowingly loaning, abandoning or allowing a permit to pass from his or her possession;
8. Tampering with, altering, or intentionally defacing a permit;
9. Any violation of this chapter; or
10. Any good cause within the meaning and the purpose of the law.

(c) Any individual whose permit has been revoked shall be ineligible to apply for a permit for three years from the date of revocation.

8:62-3.9 Renewal of permit for lead abatement worker, lead abatement supervisor, lead inspector/risk assessor and lead abatement planner/project designer

(a) An application for renewal of a permit shall be submitted during the 90 day period prior to or the 90 day period after the expiration date. When the application for renewal is submitted prior to its expiration date, the permit may continue in effect until the Commissioner renders a decision. The applicant shall be notified in writing by the Department whether a valid extension has been granted. This validation together with the expired permit shall be carried upon the permit holder and be readily available for inspection by representatives of the Department, N.J.D.C.A., N.J.D.O.L., N.J.D.E.P., and the local health department. If an individual applies after the expiration date, the applicant shall not perform any of the services for which that permit is required until such time as the permit is renewed.

(b) The Commissioner may renew a permit if the renewal applicant has:
1. Verified his or her identity;
2. Completed an application as set forth at N.J.A.C. 8:62-3.3 within 90 days prior to or after the expiration date;
3. Provided evidence of refresher training pursuant to N.J.A.C. 8:62-4.2(d) and 4.12;
4. Satisfied all outstanding penalties imposed pursuant to this chapter; and
5. Enclosed the renewal fee required by N.J.A.C. 8:62-3.3(e).

(c) The Commissioner shall treat an application for renewal of a permit which has expired for more than 90 days as an original application.

SUBCHAPTER 4. CERTIFICATION OF TRAINING COURSES

8:62-4.1 Scope of the subchapter

This subchapter shall apply to the procedures and qualifications required to obtain, maintain, or renew certification from the Commissioner to conduct training. At a minimum, training courses shall meet the requirements set forth in this subchapter or P.L. 102-550, Title X of the "Residential Lead-Based Paint Hazard Reduction Act of 1992", 15 U.S.C. 2601 et seq., whichever is more stringent.

8:62-4.2 Types of courses

(a) Initial training courses shall meet the following requirements:
1. The lead abatement worker for housing and public buildings training course shall include a minimum of 32 hours of training of which a minimum of 10 hours shall be dedicated to the conduct of hands-on training. The topics which shall be presented are set forth at N.J.A.C. 8:62-4.6;
2. The lead abatement supervisor for housing and public buildings training course shall include a minimum of 40 hours of training of which a minimum of eight hours shall be dedicated to the conduct of hands-on training. The topics which shall be presented are set forth at N.J.A.C. 8:62-4.7;
3. The lead inspector/risk assessor training course shall include a minimum of 40 hours of training of which a minimum of eight hours shall be dedicated to the conduct of hands-on training. The topics which shall be presented are set forth at N.J.A.C. 8:62-4.8;
4. The lead planner/project designer course shall include a minimum of 56 hours of training of which a minimum of 12 hours shall be dedicated to the conduct of hands-on training. The topics which shall be presented are set forth at N.J.A.C. 8:62-4.9;
5. The lead abatement worker for commercial buildings and superstructures training course shall include a minimum of 32 hours of training of which a minimum of 10 hours shall be dedicated to the conduct of hands-on training. The topics which shall be presented are set forth at N.J.A.C. 8:62-4.10; and
6. The lead abatement supervisor for commercial buildings and superstructures training course shall include a minimum of 32 hours of training of which a minimum of eight hours shall be dedicated to the conduct of hands-on training. The topics which shall be presented are set forth at N.J.A.C. 8:62-4.11.

(b) The hour requirements listed in (a)1 through 6 above shall be exclusive of lunch and break times.

(c) Demonstrations not involving individual participation shall not be considered as hands-on training.

(d) Biennial refresher training, exclusive of lunch and break times, shall meet the minimum requirements in (d)1 through 4 below. The topics required to be presented during refresher training are set forth at N.J.A.C. 8:62-4.12.
1. Seven hours for the worker courses;
2. Seven hours for the supervisor courses;
3. Seven hours for the inspector/risk assessor course; and
4. Seven hours for the planner/project designer course.

(e) Initial and refresher training for all lead courses shall be specific to a single discipline and shall not be combined with training for other disciplines.

8:62-4.3 Application for certification of training courses

(a) An applicant for certification of training courses shall submit an application and a proposal on forms provided by the Department specifying the following:
1. The name, address and telephone number of the agency, institution, or private firm which plans to conduct the course;
2. Name of the discipline(s) for which they are applying for certification;
3. A signed statement by the training manager that clearly details how the course meets the minimum requirements outlined in N.J.A.C. 8:62-4.2;
4. A description of course location and course fees;
5. Detailed outlines of course curricula as set forth at N.J.A.C. 8:62-4.6 through 12, the time allotted for each topic, and a list of the instructors for each topic area;
6. A description of the interactive/participatory teaching methods as defined at N.J.A.C. 8:62-2 which shall be employed to present each topic. Lecture shall not be considered an interactive/participatory teaching method;
7. Copies of written materials to be distributed as a part of the training courses;
8. Evidence demonstrating that the applicant has employed a training manager and has employed or contracted to employ a minimum of three instructors, either on a full-time or part-time basis to satisfy the requirements as set forth at N.J.A.C. 8:62-4.5. Resumes,

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transcripts, diplomas, and professional certifications describing specialized training and education and/or prior experience shall be submitted and documentation of compliance with the instructor criteria;

9. A list of the types, brand names, and quantities of respirators to be used to demonstrate a fit test;

10. A description of the type and quantity of protective clothing to be used during hands-on training and demonstration;

11. A description and the quantities of the materials to be used for hands-on training including, but not limited to, hand tools, ladders, scaffolding, plastic sheeting, other construction equipment, air filtration units, water spray devices, decontamination facilities, simulated lead material, and where appropriate, Material Safety Data Sheets;

12. A detailed description of the site of the training course including the address where hands-on practice exercises will be conducted;

13. A detailed description of the procedures for conducting the assessment of the hands-on skills;

14. Any restrictions on attendance, such as English-only or other language to be used.

15. For any non-English training course, all course materials, examinations and related course literature shall be translated into that language and a written certification that the translation is accurate and valid;

16. Instructor-to-student ratio for hands-on training shall be no greater than 10 students to one instructor;

17. A copy of the written examinations to be administered to the trainees by the training agency;

18. Evidence that a no-smoking policy will be established, maintained, and enforced during all aspects of the training; and

19. Evidence of a quality control plan pursuant to N.J.A.C. 8:62-4.4(t).

(b) All materials submitted as part of the application shall be typewritten or machine printed.

(c) The applicant shall successfully pass a pre-commencement inspection of the training facility(ies) conducted by representatives of the Department.

(d) The applicant shall immediately notify the Department in writing of any change(s) in the application information occurring either prior to or after the issuance of certification.

(e) A non-refundable application fee for biennial certification in the amount of $500.00 per discipline shall be forwarded with the application. The application fee shall be paid by certified check or money order and made payable to the New Jersey Department of Health. No liability shall be assumed by the Department for the loss in the transmission of the application fee.

(f) Certification of refresher training courses is expressly conditioned upon maintaining a certification in good standing in that discipline for which the applicant is applying.

(g) The Department may have 180 days for initial course certification and 45 days for refresher course certification, to approve or disapprove the application from its receipt date. In the case of approval, a biennial certification shall be granted to the applicant. In the case of disapproval, a letter describing the reason for disapproval shall be forwarded to the applicant. If certification is denied, the applicant shall wait for a period of one year from the date of application before reapplying.

8:62-4.4 Training agency operating requirements

(a) Certified training agencies shall have the burden of demonstrating compliance, or the ability to comply, with the requirements of this subchapter.

(b) Certified training agencies shall have access to sufficient classrooms, off-site demonstration facilities, equipment, materials, and instructors to ensure that adequate training meeting the requirements of this subchapter can be conducted.

(c) Certified training agencies shall use any training materials, examinations, forms, questionnaires, surveys, informational or audiovisual aids which may be required by the Department.

(d) Certified training agencies shall ensure that the training manager represents them at any meeting sponsored by the Department for the purpose of maintaining uniform and high quality training courses among certificants.

(e) Certified training agencies shall limit the class size to 25 students for the initial training courses.

(f) Certified training agencies shall limit class size to 30 students for refresher training courses.

(g) All certified training agencies shall notify the Department at least two weeks in advance of the beginning of any training course. All notifications shall be in writing and shall be submitted on forms provided by the Department. If any course information changes, the training agency shall notify the Department as soon as that agency becomes aware of such changes.

(h) Certified training agencies shall ensure that all students meet minimal literacy requirements for the course language in which the student is enrolled.

(i) Certified training agencies shall require trainees to self-certify that he or she meets the education and experience requirements outlined at N.J.A.C. 8:62-3.2(d) through (f) prior to enrollment in a training course.

(j) Certified training agencies shall ensure that all initial and refresher trainees have met the requirements for obtaining a New Jersey permit as outlined at N.J.A.C. 8:62-3.2. Certificates of completion shall be issued only to those individuals who have met these requirements and have successfully completed the initial training or one day refresher course and have passed an examination approved by the Department.

(k) Certified training agencies shall submit instructor documentation meeting the requirements of N.J.A.C. 8:62-4.5 to the Department for approval prior to allowing that instructor to conduct any training course.

(l) Certified training agencies shall issue a certificate of completion to trainees upon their successful completion of a initial or a refresher training course. The certificate shall bear the signature of the training mananger and shall specify the following:

1. A unique certificate number;
2. Full name of the trainee;
3. Discipline;
4. Expiration date of the certificate;
5. Course completion date;
6. Name, address, and telephone number of training agency; and
7. Language in which the training course was given.

(m) Certified training agencies shall permit entry to all training courses by representatives of the Department for the purposes of course evaluation and determination of compliance with this subchapter.

(n) Certified training agencies shall limit individual classes to one language.

(o) Certified training agencies shall maintain the following records:

1. All documents specified in N.J.A.C. 8:62-4.5 that demonstrates the qualifications of the training manager and the course instructors, respectively;
2. Student training records;
3. Daily class attendance records bearing the signature of the course instructor;
4. Copies of examinations administered by the training agency; and
5. Copies of the hands-on skills assessment administered by the training agency.
6. Copies of instructor performance review records.

(p) The training agency shall permit representatives of the Department to inspect and evaluate these records. Upon request by the Department, training agencies shall provide copies of all training records for the purpose of inspection, evaluation and compliance.

(q) Certified training agencies shall maintain training records for a minimum of five years. The Department shall be notified and be given the opportunity to take possession of all training records should an agency cease to conduct training.

(r) Certified training agencies shall, in writing, notify the Department in advance of any changes in information submitted on its

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agency and course applications. Any course modifications made subsequently to certification shall require 10 days prior notification and shall be subject to Department approval.

(s) Notwithstanding (q) above, the certified training agency shall notify the Department in writing at least four weeks in advance of any changes in their hands-on training site. Any changes in location and/or renovations to the site shall require a reinspection of the facility before training can be conducted at that site.

(t) Certified training agencies shall maintain a quality control plan which shall include, at a minimum, the following:

1. Procedures for periodic revision of training materials to reflect innovations in the field;
2. Procedures for annual review of instructor competency;
3. Procedures for administering the course examination to ensure the validity and integrity of the examination;
4. Procedures for administering the hands-on skills assessment; and
5. Procedures for ensuring the adequacy of facilities and equipment.

(u) Certified training agencies shall cooperate fully with the Department in all matters relating to the conduct of certified training courses, the administration of examinations and hands-on skill assessments, and the permitting of individuals pursuant to this chapter.

8:62-4.5 Criteria for training manager and training course instructors

(a) Certified training agencies shall employ a training manager who meets, at a minimum, the education and experience requirements set forth in this subchapter and the U.S.E.P.A. Model Accreditation Plan for States and includes:

1. A minimum of two years of classroom experience in teaching workers and/or adults;
2. A Bachelors or graduate level degree in building, construction technology, or engineering or industrial hygiene or safety or health; or four years experience in managing an occupational safety or health program;
3. Completion of a 40 hour train-the-trainer course which provides instruction in the planning and teaching of any adult education course; or has obtained a Bachelors degree in adult education; and
4. Completion of a minimum of 24 hours of lead specific training.

(b) To be eligible for certification of any training course, three or more course instructors shall be employed. Instructors shall meet the minimum requirements as outlined in the U.S.E.P.A. Model Accreditation Plan for States in addition to the following qualifications:

1. Successful completion of a 40 hour train-the-trainer course, or a minimum of two years of classroom experience teaching adults, or has a degree in adult education from an accredited college or university;
2. Have successfully completed 24 hours of lead-specific training;
3. Have a minimum of two years of experience related to health, safety, or regulatory aspects of lead abatement, or have a minimum of one year of lead abatement experience.

i. To qualify to teach hands-on training, instructors shall have a minimum of two years of experience in construction trades, including but not limited to, lead or asbestos abatement, painting, carpentry, or renovation and remodeling;

ii. To qualify to teach the sections on health effects, the instructor shall be a qualified health professional;

4. Translators shall have previously attended and successfully completed the appropriate lead worker course and the requisite examination;
5. Shall maintain professional competency by participating in continuing education or professional development programs at least twice a year; and
6. Shall have their performance reviewed annually by the Training Manager. Only those instructors receiving a satisfactory annual review shall provide course instruction.

8:62-4.6 Criteria for topics in the lead abatement worker for housing and public buildings training course

(a) Training courses shall be designed and conducted to include, at a minimum, the following topics:

1. Background information on lead:
i. History of lead use; and
ii. Sources of environmental lead contamination;
2. Relevant Federal, State, and local regulatory requirements, procedures, and standards:
i. The scope of all relevant New Jersey regulatory requirements; and
ii. The penalties imposed for violation of this chapter;
3. Health effects of exposure to lead;
4. Hazard recognition and control (hands-on training required)
i. Site characterization;
ii. Exposure measurements;
iii. Material identification;
iv. Safety and health plan;
v. Medical surveillance; and
vi. Engineering and work practices;
5. Personal protective equipment (hands-on training required)
i. Respiratory protection:
(1) Respiratory equipment selection;
(2) Air-purifying respirators;
(3) Care and cleaning of respirators; and
(4) Respiratory program.
ii. Protective equipment; and
iii. Hygiene practices;
6. Lead-based paint abatement and hazard reduction methods (hands-on training required);
7. Interior dust abatement methods and clean-up or lead hazard reduction (hands-on training required);
8. Soil and exterior dust abatement methods or lead hazard reduction (hands-on training required);
9. Waste disposal (hands-on training required); and
10. Course review, course examination and hands-on skills assessment.

8:62-4.7 Criteria for topics in the lead abatement supervisor for housing and public buildings training course

(a) Training courses shall be designed and conducted to include, at a minimum, the following topics:

1. All of the topics pursuant to N.J.A.C. 8:62-4.6;
2. Legal issues;
3. Insurance and bonding;
4. Development of pre-abatement work plans (hands-on training required);
5. Project management;
6. Employee information and training;
7. Community relations process;
8. Cost estimation;
9. Recordkeeping; and
10. Course review, course examination and hands-on skills assessment.

8:62-4.8 Criteria for topics in the lead inspector/risk assessor training course

(a) Training courses shall be designed and conducted to include, at a minimum, the following topics:

1. All of the topics pursuant to N.J.A.C. 8:62-4.6 (b) through (d);
2. Lead-based paint inspection methods (hands-on training required);
3. Lead-based paint testing procedures (hands-on training required);
4. Preparation of final inspection report of test results (hands-on training required);
5. Dust and soil clearance sampling methodologies (hands-on training required);
6. Legal responsibilities and potential liabilities;
7. Performance of risk assessments;
8. Visual inspection (hands-on training required);

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9. Risk assessment report form completion (hands-on training required);
10. Sampling and inspection guidelines (hands-on training required);
11. Interpretation of results and preparation of final report (hands-on training required);
12. Recommendations to abate or reduce lead-based paint hazards including instruction when interim controls are appropriate;
13. Development of interim control plan;
14. Recordkeeping; and
15. Course review, course examination and hands-on skills assessment.

8:62-4.9 Criteria for topics in the lead abatement planner/project designer training course

(a) The training course shall be designed and conducted to include, at a minimum, the following topics:
1. All of the topics pursuant to N.J.A.C. 8:62-4.7;
2. Hazard report interpretation (hands-on training required);
3. Worker protection/worker safety;
4. Environmental safety;
5. Project design (hands-on training required);
6. Construction techniques;
7. Abatement and lead hazard reduction methods;
8. Operations and maintenance planning;
9. Clean-up;
10. Clearance testing (hands-on training required);
11. Waste disposal;
12. Insurance and liability; and
13. Course review, course examination and hands-on skills assessment.

8:62-4.10 Criteria for topics in the lead abatement worker for commercial buildings and superstructures training course

(a) Training courses shall be designed and conducted to include, at a minimum, the following topics:
1. All of the topics pursuant to N.J.A.C. 8:62-4.6;
2. Welding, burning and torch cutting;
3. Mechanical disturbance of lead; and
4. Course review, course examination and hands-on skills assessment.

8:62-4.11 Criteria for topics in the lead abatement supervisor for commercial buildings and superstructures training course

(a) The training course shall be designed and conducted to include, at a minimum, the following topics:
1. All of the topics pursuant to N.J.A.C. 8:62-4.7;
2. Identification of lead-based paint (hands-on training required);
3. Welding, burning, and torch cutting;
4. Mechanical disturbance of lead; and
5. Course review, course examination and hands-on skills assessment.

8:62-4.12 Criteria for topics in refresher training courses

(a) Refresher training for all lead training courses shall consist of topics designed to increase or enhance an individual's skills and knowledge necessary to perform the job tasks and job functions associated with the respective certification.

(b) Refresher training shall include, but not be limited to:
1. An overview of key health and safety practices;
2. An update on any relevant federal, state, or local regulatory changes;
3. Any new developments in applicable state-of-the-art technologies and abatement procedures;
4. Respiratory protection programs and medical surveillance; and
5. Issuance of a closed book, written examination.

8:62-4.13 Granting of certification

(a) A biennial certification shall be granted to a training agency which has demonstrated compliance with this subchapter including course content, teaching methods, and instructor qualifications based upon the application submission required by N.J.A.C. 8:62-4.3, and such investigation as the Commissioner should deem necessary.

(b) All applicants shall be of good moral character. If the applicant is a corporation, this requirement shall apply to both the corporation and to those individuals who are responsible for the day-to-day operation of the corporation.

(d) A biennial letter of certification shall:
1. Specify the date of issuance;
2. Specify the expiration date;
3. Specify the name and address of the training agency which is certified;
4. Specify which training course(s) the certificant is authorized to teach;
5. Bear the signature of the Commissioner; and
6. Be non-transferable.

8:62-4.14 Renewal of training agency certification

(a) A complete application for renewal of certification shall be submitted at least 180 days prior to its expiration. When a completed application is submitted within the required time period, the certification shall continue in effect until the Commissioner renders a final decision on the application.

(b) In order to approve a training agency's certification renewal application, the Commissioner shall determine, based upon the application that:
1. The certificant has certified that all of the information contained on the original application is still accurate, or where applicable, has updated such information;
2. All outstanding penalties imposed on the certificant have been paid;
3. The certificant has exhibited competence, integrity, and responsibility; and
4. The certificant has submitted a certified statement, bearing the signature of the training manager, that the training agency can operate in compliance with this subchapter.

(c) The biennial application fee for renewal of the certification shall be $500.00 per discipline. The application fee shall be submitted with the application and shall be non-refundable. The application fee shall be paid by certified check or money order and made payable to the New Jersey Department of Health. No liability shall be assumed by the Department for the loss or delay in the transmission of the application fee.

(d) Any application not complying with (a) above shall be treated as a new application pursuant to N.J.A.C. 8:62-4.3.

(e) Any application from a certified training agency whose certification has lapsed shall be treated as a new application pursuant to N.J.A.C. 8:62-4.3.

8:62-4.15 Suspension or revocation of training agency certification or instructor approval

(a) Any certified training agency may have its application denied, certification suspended or revoked and/or shall be required to pay the administrative penalties set forth at N.J.A.C. 8:62-5.4 for each violation listed below:
1. Incompetence;
2. Failure to adequately present either the topics set forth in this subchapter or any other materials required by the Department;
3. Performing as a training agency without certification;
4. Submitting false information on an initial or renewal application, trainee evaluation form, or course notification form;
5. Failure to submit information or notifications in a timely manner;
6. Falsification of training records, instructor qualifications, or other certification information;
7. Failure to maintain required records;
8. Any violation of this subchapter; or
9. Any good cause within the purpose and meaning of the law.

(b) Any instructor may have his or her application denied, approval suspended or revoked and/or shall be required to pay the administrative penalties set forth at N.J.A.C. 8:62-5.4 for each violation listed below:
1. Submitting false information on an application for approval as a lead training instructor;
2. Falsification of training records;

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3. Failure to perform quality training;
4. Any violation of this subchapter; or
5. Any good cause within the meaning and purpose of the law.

SUBCHAPTER 5. COMPLIANCE AND ENFORCEMENT

8:62-5.1 Scope of the subchapter

This subchapter shall constitute the rules of the Department governing the enforcement of compliance with this chapter.

8:62-5.2 Compliance

(a) Every worker, supervisor, inspector/risk assessor, and planner/project designer falling within the scope of this chapter, shall comply with the provisions of this chapter and shall be duly permitted by the Commissioner of Health.

(b) All individuals, applicants, trainees, instructors, and certificants shall comply in all respects with the requirements of N.J.A.C. 8:62.

8:62-5.3 Statement of imminent hazard

The Commissioner may order a permit holder or certificant to temporarily cease and desist operations, pending the outcome of a hearing held pursuant to N.J.A.C. 8:62-5.5 if an applicant or certificant is causing an imminent threat to the public health, safety, or welfare.

8:62-5.4 Civil administrative penalties

(a) Whenever the Department finds that a individual, applicant, trainee, instructor, or certificant has violated any provision of N.J.A.C. 8:62, the Commissioner may assess a civil administrative penalty not to exceed $1,000 per day for the first offense and $5,000 per day for each subsequent offense. If the violation is of a continuing nature, each day shall constitute an additional and separate offense.

(b) No assessment shall be levied pursuant to this section until the violator has received notice which shall:

1. Be delivered by personal service or certified mail to the violator's last known address;
2. Specify the provisions of N.J.A.C. 8:62 which have been violated;
3. Contain a concise statement of the facts alleged to constitute the violation;
4. Specify the amount of civil administrative penalties to be imposed;
5. Provide notice of the violator's right to a hearing or an informal conference or review, pursuant to N.J.A.C. 8:62-5.5. Such notice shall:

i. Specify the time period in which the violator may submit a written request for a hearing; and

ii. Specify the address to which such request may be submitted.

(d) In assessing a civil administrative penalty pursuant to this chapter, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violation:

1. Degree of hazard posed to human health and the environment;
2. Degree of harm posed to the proper administration of the lead permitting/certification program;
3. Category of culpability evidenced by the violator's action, including knowing action, reckless action, or negligent action;

i. In determining culpability, ignorance of any legal requirement of any statute or rule shall constitute a negligent action unless the legal requirement is one of which the violator has constructive notice, in which case the violator's action shall be classified as reckless;

ii. Actual notice of the legal requirement of this chapter would constitute a finding of knowing action.

4. Past history of compliance on the part of the violator;
5. Economic benefit that the violator accrues as a result of the violation; and
6. Performance of the violator in correcting the violation.

(e) In addition to other sanctions in this chapter, the Commissioner shall require:

1. The immediate correction of any violation;
2. The removal of any worker from the job site within the meaning and purposes of this chapter;
3. The removal of any supervisor from the job site within the meaning and purpose of this chapter;
4. The removal of any inspector/risk assessor from the job site within the meaning and purpose of this chapter; and
5. The removal of any planner/project designer from the site within the meaning and purpose of this chapter.

8:62-5.5 Hearings

(a) Where the Commissioner assesses an administrative penalty under N.J.A.C. 8:62-5.4 above or proposes to suspend or revoke a permit or certification, denies an application for a permit or certification, or revokes an instructors approval, the violator, certificant, applicant or instructor, as the case may be, shall have the right to an informal conference under (b) below or a formal hearing under (c) below or both.

(b) The violator shall have the right to an informal conference or review before the Commissioner's designee. Such conference or review shall be held provided that a written request for the same has been submitted within 10 calendar days from receipt of the notice of civil administrative penalty assessment issued pursuant to N.J.A.C. 8:62-5.4. When the conference or review is held before the Commissioner's designee, he or she shall state his or her findings and conclusions in writing and transmit a copy to the violator.

(c) Any violator shall have the right to a formal hearing 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, provided that a written request for the same is submitted within 10 days after the assessment of an administrative penalty.

(d) In the alternative, recipients of an administrative penalty assessment may request the initiation of a settlement conference.

(e) Where a violator fails to request a hearing within the 10 day period, his or her right to a hearing pursuant to this section shall be deemed waived and the Commissioner's proposed action shall become final.

(f) Payment of the civil administrative penalty shall be due when a final order is issued or the notice becomes a final order.

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Proposed Amendments: N.J.A.C. 8:71

Authorized By: Drug Utilization Review Council, Henry Kozek, Secretary.

Authority: N.J.S.A. 24:6E-6(b).

Proposal Number: PRN 1994-494.

A **public hearing** concerning these proposed amendments will be held on Monday, September 26, 1994, at 2:00 P.M. at the following address:

Room 804, Eighth Floor
Department of Health
Health-Agriculture Bldg.
Trenton, New Jersey 08625-0360

Submit comments by October 6, 1994, to:

Mark A. Strollo, R.Ph., M.S.
Drug Utilization Review Council
New Jersey Department of Health
Room 501, CN 360
Trenton, N.J. 08625-0360
609-292-4029

The agency proposal follows:

Summary

The List of Interchangeable Drug Products is a generic formulary, or list of acceptable generic drugs which pharmacists must use in place of brand-name prescription medicines, passing on the resultant savings to consumers.

For example, the proposed terfenadine 60 mg tablet could be used as a less expensive substitute for Seldane, a branded prescription medicine. Similarly, the proposed theophylline extended release capsule,

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could be substituted for the more costly branded product, Slo-Bid Gyrocap.

The Drug Utilization Review Council is mandated by law to ascertain whether these proposed medications can be expected to perform as well as the branded products for which they are to be substituted. Without such assurance of "therapeutic equivalency," any savings would accrue at a risk to the consumer's health. After receiving full information on these proposed generic products, including negative comments from the manufacturers of the branded products, the advice of the Council's own technical experts, and data from the generics' manufacturers, the Council will decide whether any of these proposed generics will work just as well as their branded counterparts.

Every proposed manufacturer must attest that they meet all Federal and State standards, as well as having been inspected and found to be in compliance with the U.S. Food and Drug Administration's regulations.

Social Impact

The social impact of the proposed amendments would primarily affect pharmacists, who would need to either place in stock, or be prepared to order, those products ultimately found acceptable.

Many of the proposed items are simply additional manufacturers for products already listed in the List of Interchangeable Drug Products. These proposed additions would expand the pharmacist's supply options.

Physicians and patients are not adversely affected by this proposal because the statute (N.J.S.A. 24:6E-6 et seq.) allows either the prescriber or the patient to disallow substitution, thus refusing the generic substitute and paying full price for the branded product.

Economic Impact

The proposed amendments will expand the opportunity for consumers to save money on prescriptions by accepting generic substitutes in place of branded prescriptions. The full extent of the saving to consumers cannot be estimated because pharmacies vary in their prices for both brands and generics.

Some of the economies occasioned by these amendments accrue to the State through the Medicaid, Pharmaceutical Assistance to the Aged and Disabled Program, and prescription plan for employees. A 1988 estimate of average savings per substituted Medicaid prescription was $7.31. However, the number of prescriptions that will be newly substituted due to these proposed amendments cannot be accurately assessed in order to arrive at a total savings.

Regulatory Flexibility Analysis

The proposed amendments impact many small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. specifically, over 1500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

However, there are no reporting or recordkeeping requirements for pharmacies, and small generic drug manufacturers have minimal initial reports, and no additional ongoing reporting or recordkeeping requirements. Further, these minimal requirements are offset by the increased economic benefits accruing to these same small generic businesses due to these proposed amendments.

Full text of the proposed amendments follows:

The following products are proposed for **addition** to the List of Interchangeable Drug Products:

ALDACTAZIDE-50
Spironolactone/
hydrochlorothiazide
50mg/50mg
Tablet
Danbury

AMOXIL
Amoxicillin as trihydrate
125mg
Tablet, chewable
Novopharm

AMOXIL
Amoxicillin as trihydrate
250mg
Tablet, chewable
Novopharm

ANAPROX
Naproxen sodium
275mg
Tablet
Mylan

ANAPROX
Naproxen sodium
550mg
Tablet
Mylan

ANSAID
Flurbiprofen
100mg
Tablet
Mylan

ANSAID
Flurbiprofen
100mg
Tablet
Novopharm

ANSAID
Flurbiprofen
50mg
Tablet
Mylan

ANSAID
Flurbiprofen
50mg
Tablet
Novopharm

ANUSOL HC
Hydrocortisone acetate
25mg
Suppository
Clay-Park Labs

BUSPAR
Buspirone HCl
10mg
Tablet
Danbury

BUSPAR
Buspirone HCl
5mg
Tablet
Danbury

CAPOTEN
Captopril
100mg
Tablet
Novopharm

CAPOTEN
Captopril
12.5mg
Tablet
Novopharm

CAPOTEN
Captopril
25mg
Tablet
Novopharm

CAPOTEN
Captopril
50mg
Tablet
Novopharm

CORGARD
Nadolol
120mg
Tablet
Danbury

CORGARD
Nadolol
40mg
Tablet
Danbury

CORGARD
Nadolol
80mg
Tablet
Danbury

CORTENEMA
Hydrocortisone
100mg per 60ml
Solution
Copley

CORTISPORIN
OPTHALMIC
Polymyxin B sulfate 10,000U
with hydrocortisone 1%,
neomycin sulfate 0.5%
Per ml
Ophth Susp
Steris

DARVOCET N
Propoxyphene napsylate
100mg/acetaminophen
100mg/650mg
Tablet
Danbury

DESYREL
Trazodone HCl
150mg
Tablet
Danbury

FIORINAL
Aspirin, butalbital and caffeine
325/50/40mg
Tablet
Danbury

GARAMYCIN
Gentamicin
3mg/ml
Ophth solution
Schering

GARAMYCIN
Gentamicin
3mg/gm
Ophth ointment
Schering

GLUCOTROL
Glipizide
10mg
Tablet
Novopharm

GLUCOTROL
Glipizide
5mg
Tablet
Novopharm

GLUCOTROL
Glipizide
10mg
Tablet
Watson

GLUCOTROL
Glipizide
5mg
Tablet
Watson

GOLYTELY
PEG-3550 & electrolytes in
4000ml
Electro gavage
Stafford-Miller International

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ISORDIL
Isosorbide dinitrate
20mg
Tablet
Danbury

ISORDIL
Isosorbide dinitrate
30mg
Tablet
Danbury

ISORDIL
Isosorbide dinitrate
40mg
Tablet
Danbury

K-LYTE CL
Potassium chloride, potassium bicarbonate and 1-lysine monohydrochloride
25 mEq
Tablet, efferves
CFH Labs

LEVSIN
Hyoscyamine sulfate
0.125mg
Tablet
Contract Pharmacal

LOPID
Gemfibrozil
600mg
Tablet
Mylan

LOPID
Gemfibrozil
600mg
Tablet
Purepac

LOPRESSOR
Metoprolol tartrate
50mg
Tablet
Watson

LOPRESSOR
Metoprolol tartrate
100mg
Tablet
Watson

MAXZIDE-25 MG
Triamterene, hydrochlorothiazide
37.5/25mg
Tablet
Danbury

METIMYD
Sulfacetamide 100mg, prednisolone 5mg
Per ml
Ophth Susp
Schering

MICRONASE
Glyburide
1.25mg
Tablet
Novopharm

MICRONASE
Glyburide
2.5mg
Tablet
Novopharm

MICRONASE
Glyburide
5mg
Tablet
Novopharm

MEXITIL
Mexiletine HCl
150mg
Capsule
Novopharm

MEXITIL
Mexiletine HCl
200mg
Capsule
Novopharm

MEXITIL
Mexiletine HCl
250mg
Capsule
Novopharm

MODURETIC 5-50
Amiloride HCl with hydrochlorothiazide
5/50mg
Tablet
Danbury

NAPROSYN
Naproxen
250mg
Tablet
Danbury

NAPROSYN
Naproxen
375mg
Tablet
Danbury

NAPROSYN
Naproxen
500mg
Tablet
Danbury

NORPRAMIN
Desipramine HCl
100mg
Tablet
Danbury

NORPRAMIN
Desipramine HCl
10mg
Tablet
Danbury

NORPRAMIN
Desipramine HCl
150mg
Tablet
Danbury

NORPRAMIN
Desipramine HCl
25mg
Tablet
Danbury

NORPRAMIN
Desipramine HCl
50mg
Tablet
Danbury

NORPRAMIN
Desipramine HCl
75mg
Tablet
Danbury

ORGANIDIN
Iondinated glycerol
60mg/5ml
Elixir
Barre-National

P-V TUSSIN
Hydrocodone bitartrate 2.5mg, pseudoephedrine HCl 30mg, chlorpheniramine maleate 2mg
Per 5ml
Liquid
KV Pharm

PARLODEL
Bromocriptine mesylate
2.5mg
Tablet
Danbury

PROLIXIN
Fluphenazine HCl
10mg
Tablet
Danbury

PROLIXIN
Fluphenazine HCl
1mg
Tablet
Danbury

PROLIXIN
Fluphenazine HCl
2.5mg
Tablet
Danbury

PROLIXIN
Fluphenazine HCl
5mg
Tablet
Danbury

PROVENTIL
Albuterol sulfate
2mg
Tablet
Warrick

PROVENTIL
Albuterol sulfate
4mg
Tablet
Warrick

QUINAMM
Quinine sulfate
260mg
Tablet
Royce

QUINIDEX
Quinidine sulfate
300mg
Tablet
Copley

REGLAN
Metoclopramide
5mg
Tablet
Danbury

SELDANE
Terfenadine
60mg
Tablet
Danbury

SLO-BID
Theophylline
100mg
Capsule
Arcola

SLO-BID
Theophylline
125mg
Capsule
Arcola

SLO-BID
Theophylline
200mg
Capsule
Arcola

SLO-BID
Theophylline
300mg
Capsule
Arcola

STUARTNATAL PLUS
Prenatal vitamin
Per tablet
Tablet
Amide

STUARTNATAL PLUS
Prenatal vitamin
Per tablet
Tablet
Contract Pharmacal

SULAMYD
Sulfacetamide sodium
10%
Ophth ointment
Schering

SULAMYD
Sulfacetamide sodium
10%
Ophth solution
Schering

SYMMETREL
Amantadine HCl
50mg/5ml
Syrup
Dupont

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TEMOVATE
Clobetasol propionate
0.05%
Cream
NMC Labs

TEMOVATE
Clobetasol propionate
0.05%
Ointment
NMC Labs

TENORMIN
Atenolol
25mg
Tablet
Danbury

TRILAFON
Perphenazine
16mg
Tablet
Warrick

TRILAFON
Perphenazine
2mg
Tablet
Warrick

TRILAFON
Perphenazine
4mg
Tablet
Warrick

TRILAFON
Perphenazine
8mg
Tablet
Warrick

TUSSI-ORGANDIN DM
Iodinated glycerol 30 mg, dextromethorphan HBr 10mg
Per 5ml
Liquid
Barre-National

TUSSI-ORGANDIN
Iodinated glycerol 30 mg and codeine phosphate 10mg
Per 5ml
Liquid
Barre-National

VASOCIDIN
Prednisolone acetate 0.5%, Sulfacetamide sodium 10%
Per gm
Ophth ointment
Schering

WYTENSIN
Guanabenz
4mg
Tablet
Copley

WYTENSIN
Guanabenz
8mg
Tablet
Copley

HIGHER EDUCATION

(a)

BOARD OF DIRECTORS OF THE EDUCATIONAL OPPORTUNITY FUND

Administrative Procedures and Policies
Program Support

Proposed Amendments: N.J.A.C. 9:11-1.2, 1.7, 1.8, 1.19, 1.20, 1.22, 1.23 and 9:12-1.1, 1.4, 1.6, 1.7, 1.8, 1.9, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.23, 2.5, 2.7, 2.8 and 2.10

Authorized By: Board of Directors of the Educational Opportunity Fund, Judith Cambria, Chairperson.
Authority: N.J.S.A. 18A:71-33.
Proposal Number: PRN 1994-504.

Submit comments by October 6, 1994 to:
Jeanne Oswald
Administrative Practice Officer
Commission on Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Educational Opportunity Fund Program is open to students from educationally disadvantaged backgrounds. Participants in the program are eligible to receive financial aid and other support services while attending institutions of higher education in New Jersey. The Board of Directors of the Educational Opportunity Fund is responsible for the development and maintenance of a statewide system for the identification and recruitment of potential college students from backgrounds of historical poverty; for the development of eligibility criteria for financial assistance from the Fund based on need and potential for success in college; for establishing procedures for determining the amount of each award according to the total financial need of each student; and for advising (in cooperation with public and independent institutions of higher education in the state) on the development, organization, and coordination of a range of educational support and enrichment activities.

The proposed amendments to Chapter 11, Administrative Policies and Procedures, with the exception of N.J.A.C. 9:11-1.8(d), and to Chapter 12, Program Support, are minor technical changes to reflect recent legislative action which abolished the Department of Higher Education, the Board of Higher Education and the position of Chancellor of Higher Education. The functions of both entities relative to the administration of the Educational Opportunity Fund (EOF) Program were transferred to the Commission on Higher Education, the Board of Directors of the Educational Opportunity Fund or the Office of Student Assistance. The proposed amendments merely reflect the appropriate nomenclature.

The amendments proposed to N.J.A.C. 9:11-1.8(d) will increase the maximum amount of the grant award by $200.00 for junior and senior students attending public institutions, and by $250.00 for the same category of students attending independent institutions. The cost of college attendance has increased by 45 percent, and the only available source of financial aid to help EOF students meet this increased expense has been loans. In order to reduce the amount of loan indebtedness EOF students incur, the Board recommended eliminating the difference in the amount of the award for junior and senior students at four year institutions.

The proposed amendment to N.J.A.C. 9:11-1.2(b)4 changes the approval agency from the "Department of" to the "Commission on" Higher Education.

The proposed amendment to N.J.A.C. 9:11-1.7(c) deletes the name of the Department of Higher Education which no longer exists.

The proposed amendment to N.J.A.C. 9:11-1.8(d) will eliminate the differential in the EOF student grant award ranges for upperclassmen, thus making the EOF grant award ranges the same for each class of students, freshmen through seniors.

The proposed amendment to N.J.A.C. 9:11-1.19(d) and (g) eliminates the periods between the letters EOF and changes references from the "Department of", to the "Commission on" Higher Education.

The proposed amendment to N.J.A.C. 9:11-1.19(f) eliminates the periods between the letters EOF and changes the reference from the Department of Higher Education to the Office of Student Assistance.

The proposed amendment to N.J.A.C. 9:11-1.20(b) changes the reference from the Department of Higher Education to the Office of Student Assistance.

The proposed amendment to N.J.A.C. 9:11-1.22(f) deletes the words "state financial assistance program" and replaces them with "EOF student grant funds" and clarifies that the EOF program which is part of the Commission on Higher Education should be notified rather than the Office of Student Assistance which has the responsibility for all of the other state student financial assistance programs.

The proposed amendment to N.J.A.C. 9:11-1.23(a) deletes the reference to the Board of Higher Education which no longer exists.

The proposed amendment to N.J.A.C. 9:12-1.1(a) changes the reference from the Chancellor of Higher Education to the Board of Directors of EOF.

The proposed amendment to N.J.A.C. 9:12-1.4(c) and (d) changes the reference from the "Department of", to the "Commission on" Higher Education and specifies that it is the Executive Director of EOF who reviews the application.

The proposed amendment to N.J.A.C. 9:12-1.6(b) adds the word "EOF" to specify that the Executive Director of EOF has the responsibility for conducting reviews and making recommendations on appeals.

The proposed amendment to N.J.A.C. 9:12-1.7 changes the reference from the "Department of" to the "Commission on" Higher Education, "EOF office".

The proposed amendment to N.J.A.C. 9:12-1.8(b)9 changes the reference from the "Department of", to the "Commission on" Higher Education.

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The proposed amendment to N.J.A.C. 9:12-1.9(a) changes the reference from the "Department of", to the "Commission on" Higher Education.

The proposed amendment to N.J.A.C. 9:12-1.16(a) adds the word "EOF" to specify that the EOF Executive Director has the authority to request proposals from institutions for the development of experimental programs.

The proposed amendment to N.J.A.C. 9:12-1.17(a) and (b) changes the reference from the "Department of", to the "Commission on" Higher Education.

The proposed amendment to N.J.A.C. 9:12-1.18(a) eliminates the periods between the word EOF and clarifies that the EOF Executive Director has the responsibility for the approving transfer of funds.

The proposed amendment to N.J.A.C. 9:12-1.19 eliminates the periods between the word EOF and clarifies that the Executive Director is the EOF Executive Director.

The proposed amendment to N.J.A.C. 9:12-1.20(a) eliminates the periods between the word EOF and clarifies that the Executive Director is the EOF Executive Director.

The proposed amendment to N.J.A.C. 9:12-1.21(b)6 changes the reference from the "Department of", to the "Commission on" Higher Education.

The proposed amendment to N.J.A.C. 9:12-1.23(c) adds the word "EOF" to clarify that the Executive Director referred to is the EOF Executive Director.

The proposed amendment to N.J.A.C. 9:12-2.5(a) changes the reference from the "Department of", to the "Commission on" Higher Education.

The proposed amendment to N.J.A.C. 9:12-2.7(d) changes the reference from the "Department of", to the "Commission on" Higher Education.

The proposed amendment to N.J.A.C. 9:12-2.8(d) changes the reference from the Department of Higher Education, to the Office of Student Assistance.

The proposed amendment to N.J.A.C. 9:12-2.10(a) and (b) changes the reference from the "Department of", to the "Commission on" Higher Education.

Social Impact

The majority of the proposed amendments are technical changes to reflect recent legislation which abolished the Department of Higher Education, Board of Higher Education and the position of Chancellor. The responsibility for higher education relative to the EOF program was transferred to the Commission on Higher Education, the Board of Directors of EOF, and the Office of Student Assistance. These amendments will have no social impact on the ability of institutions of higher education to participate in the EOF program or identify their EOF target population.

The amendments proposed to N.J.A.C. 9:11-1.8(d) will eliminate the lower EOF student grant award for junior and senior students at the four year institutions, thus equalizing the award ranges for all classes of students, freshmen through seniors. This change recognizes that EOF student grant awards have not increased since the 1986/87 academic year. The lower EOF student grant award for junior and senior students was adopted at a time when sufficient funds were not available to increase EOF awards for all eligible students. The cost of college attendance has increased by 45 percent, and the only increasing source of financial aid available to EOF students are loans. The number of EOF students who choose to "stop-out" for a semester to earn enough money to meet the cost of college attendance without a loan has increased. The adoption of this amendment will make it possible to increase the amount of the grant award for upper-class EOF students. Failure to adopt this amendment would result in increased loan indebtedness for approximately 3,500 students.

Economic Impact

The EOF program is a collaborative effort between the Commission on Higher Education, Educational Opportunity Fund (which administers the program) and the state's colleges and universities (which recruit and directly serve the students). Funds for EOF student financial aid grants are derived from State appropriations. The FY 1995 State appropriation to support Article III academic year EOF student grants is $12,379,600. Rather than increase EOF enrollment for the 1994/95 academic year, institutions were held to their 1993/94 actual level of EOF student enrollment.

The median annual family income of dependent EOF students in the Fall of 1992 was $14,506 (compared to $31,909 for all other recipients of State financial aid programs in New Jersey and a 1990 state median family income of $39,000). Almost all EOF students are first generation college students, 70 percent come from single female parent households, and 15 percent come from households receiving public assistance. The proposed amendment to N.J.A.C. 9:11-1.8(d) would decrease the amount of loan indebtedness for a population of students who can least afford to mortgage their futures.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments pertain to student participants and participating New Jersey colleges and universities.

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

9:11-1.2 Student eligibility

(a) (No change.)

(b) To be initially eligible for an Educational Opportunity Fund grant, a student must have demonstrated that he or she:

1.-3. (No change.)

4. As an undergraduate student, is enrolled or intends to be enrolled full-time and matriculated in a curriculum leading to an undergraduate degree or certificate in an eligible institution as defined in N.J.S.A. 18A:71-47 of collegiate grade in New Jersey approved or licensed by the [State Board of] **Commission on** Higher Education and participating in the EOF Program. Degree or certificate programs must have a minimum required equivalent to 24 semester hours and be at least one academic year in duration. An eligible student must exhibit evidence for potential success in college, but:

i.-iv. (No change.)

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

9:11-1.7 Verification of financial eligibility

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

(c) Students who have been found eligible to receive student assistance must provide an authorization to the [Department of Higher Education,] Office of Student Assistance, which permits the release of Internal Revenue Service and/or State income tax returns for verification purposes. Financial data provided on a financial aid form approved by the EOF Board and Student Assistance Board may be verified by the Department and/or institution through the comparison of information reported on income tax returns and other documentation. Discrepancies will require the reevaluation of the student's eligibility. Students as well as institutions will be notified if an adjustment in the value of aid is required.

(d)-(f) (No change.)

9:11-1.8 Grant amount

(a)-(c) (No change.)

(d) The EOF Board of Directors shall annually review the State grant amounts of EOF students and make adjustments, if necessary. The minimum and maximum award range for adjustments to full-time Undergraduate EOF grants for each type of institution follows:

Undergraduate	Minimum	Maximum
Community Colleges:		
[Freshman/Sophomore]	$200	$ 650
State Colleges:		
Commuter:		
[Freshman/Sophomore]	200	750
[Junior/Senior	200	550]
Residential:		
[Freshman/Sophomore]	200	1,000
[Junior/Senior	200	800]

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Rutgers, NJIT, UMDNJ-SHRP:		
Commuter:		
[Freshman/Sophomore]	200	750
[Junior/Senior	200	550]
Residential:		
[Freshman/Sophomore]	200	1,000
[Junior/Senior	200	800]
Independent Colleges:		
[Freshman/Sophomore]	200	1,950
[Junior/Senior	200	1,700]

(e)-(f) (No change.)

9:11-1.19 Operational provisions for undergraduate grants

(a)-(c) (No change.)

(d) At the request of the Executive Director, institutions shall submit to the [DHE] **Commission**/EOF office student background information that was essential in determining student eligibility for the EOF program. The format for the collection of this information shall be established prior to the academic year for which the students are enrolled.

(e) (No change.)

(f) All files of students receiving EOF grants are subject to a fiscal audit conducted by the [Department of Higher Education] **Office of Student Assistance**.

(g) All participating institutional programs shall be required to cooperate fully in specified program analysis and evaluation activities carried out by the [DEH] **Commission**/EOF office, in accordance with N.J.A.C. 9:12-1.17 "Program audits and evaluations".

9:11-1.20 Application procedures for EOF undergraduate grants

(a) (No change.)

(b) Applicants for undergraduate EOF must complete a financial aid form in accordance with N.J.A.C. 9:11-1.7(e). Students must apply for the Pell Grant and State student assistance programs by authorizing release of information to the New Jersey [Department of Higher Education] **Office of Student Assistance**.

9:11-1.22 Refunds and repayments of disbursements made to students

(a)-(e) (No change.)

(f) If a cash disbursement has been made by an institution for non-institutional costs from [a State financial assistance program] **EOF student grant funds**, and it is determined by application of the institution's refund policy and the above formula that a refund should be paid to the State, the institution shall endeavor to collect the overpayment from the student and return it to the State. If this effort is unsuccessful, the institution shall notify the [Department of] **Commission on** Higher Education, **EOF Office** of the amount owed [for each State financial assistance program]. Non-institutional cost may include, but are not limited to, room and board, books and supplies, transportation, and miscellaneous expenses.

(g) (No change.)

9:11-1.23 Part-time students

(a) Eligibility for EOF grants shall be extended on an annual basis to part-time students upon the approval of the Board of Directors of EOF [and the Board of Higher Education] depending on the level of appropriated funds.

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

9:12-1.1 Scope and purpose

(a) N.J.S.A. 18A:71-39 provides that the [Chancellor of Higher Education] **Educational Opportunity Fund Board of Directors** shall develop, establish and maintain programs of remedial and supplementary education for students who receive assistance under the Educational Opportunity Fund. The Program shall be designed to provide access to and preparation for undergraduate, graduate and professional education.

(b) (No change.)

9:12-1.4 Application process

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

(c) The application will be reviewed by the EOF Executive Director in the [Department of] **Commission on** Higher Education for compliance and development of program recommendations to the EOF Board of Directors. The Board shall conduct an annual meeting to determine funding allocations for the next academic year for each institution. The Executive Director **of EOF** shall provide written notification of the Board's decision on each application. This shall be in the form of a preliminary notification specifying the funding level and any stipulations regarding the conduct of the program or the disbursement of funds. This preliminary notification shall be endorsed by the institutional President and returned to the Executive Director **of EOF**.

(d) Institutions may appeal the funding decision of the Board by submitting a written request to the Executive Director **of EOF** within 30 days of issuance of the preliminary notification. The [E.O.F.] **EOF** Executive Director will conduct a review of the appeal and make appropriate recommendations to the Board of Directors.

(e) (No change.)

9:12-1.6 Institutional commitment

(a) (No change.)

(b) The EOF Executive Director shall conduct a review of any exceptional items to determine acceptability of in-kind contributions on all applications and make recommendations to the EOF Board of Directors. Institutions may appeal this decision by submitting a written request to the EOF Executive Director within 30 days of issuance of the formal agreement. The **EOF** Executive Director will conduct a review of the appeal and make a recommendation to the Board of Directors.

1.-2. (No change.)

9:12-1.7 Accountability of institutional share

The budget application shall provide a format to record items for consideration of institutional share. Final determination will be made by the Board of Directors on the basis of their allocation decision on each budget application. Each institution will receive written notification of its allocation from the EOF Executive Director. Institutional share and grant award items including fringe benefits shall be recorded by the program and are subject to audit at any time by the [Department of] **Commission on** Higher Education, **EOF office**.

9:12-1.8 Institutional administration

(a) (No change.)

(b) Each participating institution shall insure that provisions are made for the director to fulfill the following responsibilities:

1.-8. (No change.)

9. Supervision and submission of all required materials to the [DHE] **Commission**/EOF Office; and

10. (No change.)

(c)-(f) (No change.)

9:12-1.9 Recruitment and admission

(a) Each participating institution shall develop and implement an annual plan for the recruitment of potential students for the EOF program. This plan shall be subject to an audit by [DHE] **Commission**/EOF at any time. The plan will identify a significant pool of potential students from specific disadvantaged groups in the geographic region. Target populations shall include significant numbers of students with a background of historical poverty (in the black, Puerto Rican and other Hispanic communities, as well as other disadvantaged ethnic groups of the region.) In addition, the plan shall identify a significant pool of potential non-traditional students such as welfare recipients, unemployed or under employed adults, and participants enrolled in JTPA and Veterans Programs, as well as various social rehabilitation services in the community. The recruitment plan shall include the timetable, goals, objectives, and selection process for EOF students at the participating institution.

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

9:12-1.16 Experimental programs

(a) The **EOF** Executive Director may request proposals from institutions to support research and developmental projects that may increase program effectiveness and encourage innovative practices.

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The Executive Director of [E.O.F.] **EOF**, upon the approval of the Board of Directors, is authorized to grant awards to institutions for such projects. Experimental areas may include, but are not limited to projects that would:

1.-3. (No change.)

9:12-1.17 Program audits and evaluations

(a) The EOF Executive Director shall maintain adequate procedures to monitor all program functions and components of all institutions receiving funds under this section. Due notice shall be provided from the [DHE] **Commission/**EOF Office to visit any institution to conduct monitoring activities which may include evaluation, audits, and post-audit activities on a random or selected basis as needed.

(b) The EOF Executive Director shall conduct regular program audits and evaluations to determine regulatory compliance and program effectiveness. During these processes, [DHE] **Commission/**EOF Staff shall document any exceptional budgetary items and ineffective program components and report such items to the EOF Executive Director.

9:12-1.18 Transfer of funds

(a) [E.O.F.] **EOF** grant funds may not be transferred to establish items that were not part of the original contract, without prior approval by the **EOF** Executive Director.

(b) (No change.)

9:12-1.19 Program non-compliance

(a) Upon the receipt of a complaint or unsatisfactory evaluation, the **EOF** Executive Director or his/her designee may conduct an inquiry at the institution which is the subject of the complaint to discuss the alleged violation or questionable practice with the institutional president, [E.O.F.] **EOF** Director, and other appropriate officials. Such inquiry shall be for the purpose of confirming or denying the existence of the questioned practice or violation of program regulations.

(b) The **EOF** Executive Director shall make a written report of the findings and a copy of the report will be transmitted to the institutional president and campus [E.O.F.] **EOF** Director. This report shall include a specific description of the violation or practice with specific recommendations to correct the situation within a specified time period as the **EOF** Executive Director shall determine.

(c) The institution may appeal the findings of this report. Such appeal shall be in writing and directed to the Chairman of the [E.O.F.] **EOF** Board. When such an appeal is taken, the [E.O.F.] **EOF** Board of Directors shall schedule a hearing of the appeal within a reasonable time period. The [E.O.F.] **EOF** Board may uphold or overturn the report of the **EOF** Executive Director and modify the recommendation as it deems appropriate.

9:12-1.20 Program probationary status

(a) The [E.O.F.] **EOF** Board of Directors may place an institutional program on probation for failure to correct program deficiencies within the time directed by the **EOF** Executive Director. The [E.O.F.] **EOF** Board shall place such restrictions as it believes are necessary upon an institutional program which is placed on probation. Restrictions which may be imposed include, but are not limited to, the following:

1.-3. (No change.)

9:12-1.21 Community Advisory Board

(a) (No change.)

(b) The Community Advisory Board shall meet at least six times during the calendar year. The Board shall demonstrate involvement in the following activities at a minimum:

1.-5. (No change.)

6. Reviewing and commenting on the institution's EOF funding application, prior to its submission to the [Department of] **Commission on** Higher Education; and

7. (No change.)

(c) (No change.)

9:12-1.23 Annual Program Report

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

(c) Periodic reports will be requested in accordance with a timetable established in advance by the **EOF** Executive Director. Failure to submit reports in a timely manner may result in cancellation or non-payment of the grant award.

9:12-2.5 Funding process

(a) Funds will be allocated to eligible institutions according to program budget applications submitted to the [DHE] **Commission/**EOF Office and approved by the EOF Board of Directors.

(b) (No change.)

9:12-2.7 Liability

(a)-(c) (No change.)

(d) The EOF Executive Director, with the cooperation of institutional officials, shall undertake appropriate steps to reclaim monies due the [Department of] **Commission on** Higher Education/Educational Opportunity Fund from ineligible students.

9:12-2.8 Operational provisions for summer program payment

(a)-(c) (No change.)

(d) All files of students receiving EOF grants will be subject to a fiscal audit conducted by the [Department of Higher Education] Office of Student Assistance.

9:12-2.10 Summer program evaluation

(a) The EOF Executive Director shall distribute a standard summer program evaluation form to participating programs. Each institution shall submit the completed form according to the required submission timetable to the [DHE] **Commission/**EOF Office.

(b) The [DHE E.O.F.] **Commission/EOF** Office may, in addition, conduct summer program evaluations to insure maximum program effectiveness and accountability.

(c) (No change.)

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS

Determination of Insurers in a Hazardous Financial Condition

Proposed Amendment: N.J.A.C. 11:2-27.3

Authorized By: Andrew J. Karpinski, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:17-1 et seq., 17:23-20 et seq., 17:27A-1 et seq., 17:30C-1 et seq. and 17:51A-1 et seq.

Proposal Number: PRN 1994-472.

Submit comments by October 6, 1994 to:

Donald Bryan
Acting Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department of Insurance (Department) is proposing amendments to N.J.A.C. 11:2-27.3, which sets forth various factors which the Commissioner of Insurance (Commissioner) shall consider in determining whether an insurer is in a hazardous financial condition. A determination of hazardous financial condition provides one of the grounds for the Commissioner to take various actions, including, but not limited to, subjecting the insurer to administrative supervision pursuant to N.J.S.A. 17:51A-1 et seq. or taking action to revoke or nonrenew an insurer's authority to transact insurance in this State. N.J.A.C. 11:2-27 became effective July 6, 1992, and was amended effective August 16, 1993. One of the factors that the Commissioner may consider is: "a finding that the insurer's asset portfolio, when viewed in light of current economic

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conditions, is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature." N.J.A.C. 11:2-27.3(a)4.

On October 27, 1993 the Commissioner issued Bulletin No. 93-15 to advise insurers of one of the standards the Department will consider in determining whether the "sufficient value, liquidity, or diversity" factor exists for domestic property/casualty insurers. The purpose of the Bulletin was to provide greater guidance for evaluating "sufficient value, liquidity, or diversity" as it pertains to investments in subsidiaries for property/casualty insurers. As noted in the Bulletin, N.J.S.A. 17B:20-4 provides a statutory limitation for investments in certain subsidiaries by domestic life and health insurers to no more than eight percent of the insurer's total admitted assets. However, no specific statutory standard exists with respect to investments in subsidiaries by domestic property/casualty insurers. Nevertheless, as noted in the Bulletin, the Department believes that excessive investment in subsidiaries can cause an insurer to be in a hazardous financial condition and potentially unable to meet its obligations.

The Department's policy as expressed in this proposed amendment on the potential hazards of excessive investments in subsidiaries are consistent with those of the National Association of Insurance Commissioners (NAIC). The NAIC provides as one of the standards under its Financial Regulation Standards and Accreditation Program (Accreditation Program), the requirement that a state require a diversified investment portfolio for all domestic insurers as to type and issue and include a requirement for liquidity. In addition, NAIC Accreditation standards require a state to limit a domestic insurer's investments in non-insurance subsidiaries consistent with the limitations set forth in the model Insurance Holding Company System Regulatory Act adopted by the NAIC, or to have a standard substantially similar thereto. The NAIC model provision generally provides that a domestic insurer may invest in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries, excluding investments in insurance subsidiaries, in amounts which do not exceed the lesser of 10 percent of such insurer's assets or 50 percent of such insurer's surplus as regards policyholders, provided that after such investment, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. Limitations are also provided for investments in subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer.

The Department thus believes that it is reasonable and appropriate to utilize the investment standards set forth in the NAIC model as one of the standards for determining whether a property/casualty insurer will be considered to be in a hazardous financial condition pursuant to N.J.A.C. 11:2-27.3(a)4. The Department believes that utilizing this standard is reasonable in that it reflects the national standard which is being promoted by the NAIC through the Accreditation Program.

Accordingly, in applying the criteria set forth in N.J.A.C. 11:2-27, the Department shall presume that a domestic property/casualty insurer's asset portfolio, when viewed in light of current economic conditions, is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature if the standard described above and as set forth fully in proposed N.J.A.C. 11:2-27.3(b) exists. An insurer may rebut the presumption that the factor exists as set forth above pursuant to N.J.A.C. 11:2-27.4(b) by demonstrating to the Commissioner that after such investments the insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

Social Impact

The proposed amendment codifies Department practice as set forth in Bulletin No. 93-15 with respect to determination of whether the asset portfolio of a domestic property/casualty insurer is of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature. Codification of this standard through these proposed amendments will ensure that all domestic property/casualty insurers are apprised of one criterion utilized in determining whether the "sufficient value, liquidity, or diversity" factor exists and provides greater guidance for evaluating whether the factor exists as it pertains to investments in subsidiaries for domestic property/casualty insurers. Because no statutory standard exists with respect to investments in subsidiaries by domestic property/casualty insurers, this codification of Department practice will help ensure consistency and uniformity with respect to the application of N.J.A.C. 11:2-27.3(a)4 to such insurers. In addition, since insurers will be fully apprised of the standard they should be in a position to take such steps as are necessary to avoid a finding by the Commissioner that a hazardous financial condition exists. This should help ensure that insurers will have sufficient assets and will be in a financial position to pay their obligations, and reduce the likelihood that delinquency proceedings will be instituted against an insurer, thereby avoiding the costs and disruptions of such proceedings. This, in turn, will benefit insurers, the Department, claimants, and the public generally.

Economic Impact

The Department believes that no adverse economic impact should be experienced by insurers as a result of the proposed amendment. As noted in the Summary and Social Impact statements above, the proposed amendments merely codify Department practice set forth in Bulletin No. 93-15 with respect to determining whether the "sufficient value, liquidity or diversity" factor exists for domestic property/casualty insurers.

Through codification of this standard, all insurers will be appprised of a standard for determining whether the factor exists. Insurers therefore should be in a position to take such action as is necessary to avoid a finding by the Commissioner of a hazardous financial condition, thereby reducing the likelihood that delinquency proceedings will be instituted against such insurers. This, in turn, will help benefit policyholders, insurers and the Department by avoiding any costs associated with the rehabilitation or liquidation of insurers, including costs to the New Jersey Property/Liability Insurance Guaranty Association, which is obligated to pay claims for insolvent property/casualty insurers, and which is funded by assessments on member insurers which are ultimately borne by policyholders in this State.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As noted above, the proposed amendments merely codify a standard the Department will utilize in determining whether the factor set forth in N.J.A.C. 11:2-27.3(a)4 exists. The amendment thus provides greater guidance both to the Department and insurers with respect to the application of this factor. No specific reporting, recordkeeping, or compliance requirements are imposed by this proposed amendment.

Full text of the proposal follows (additions indicated in boldface **thus**):

11:2-27.3 Determination of hazardous financial conditions; factors

(a) (No change.)

(b) **The Commissioner shall presume that the factor set forth in (a)4 above exists with respect to a domestic property and casualty insurer if the Commissioner finds the following:**

1. The insurer has invested in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries, in amounts which exceed the lesser of 10 percent of such insurer's assets or 50 percent of such insurer's surplus as regards policyholders, or that otherwise after such investments that the insurer's surplus as regards policyholders is not reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

i. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included:

(1) The total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and

(2) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation; or

2. The insurer has invested any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer, and that each such subsidiary has not agreed to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed the

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investment limitations described in (b)1 above or in any other applicable provision of N.J.S.A. 17:24-1 et seq. The total investment of the insurer shall include any direct investment by the insurer in an asset, and the insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of such subsidiary.

(c) An insurer may rebut the presumption as set forth in (b) above pursuant to N.J.A.C. 11:2-27.4(b) by demonstrating to the Commissioner that after such investments the insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

Recodify existing (b) as **(d)** (No change in text.)

(a)

LEGISLATIVE AND REGULATORY AFFAIRS

Personal Private Passenger Automobile Insurance Provision of Coverage to All Eligible Persons Applicants

Proposed Amendments: N.J.A.C. 11:3-33.2; 11:3-44.3 and 44.4; and 11:17A-1.2 and 1.7

Authorized By: Andrew J. Karpinski, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e), 17:29A-7 and 17:33B-15.

Proposal Number: PRN 1994-505.

Submit comments by October 6, 1994 to:
Donald Bryan, Acting Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

These proposed amendments reestablish the requirements of N.J.A.C. 11:17A-1.2, 11:17A-1.7, 11:3-33.2, 11:3-44.3 and 11:3-44.4, which collectively require private passenger automobile insurers to provide coverage within five days after application. These rules were initially adopted effective March 1, 1993 on an emergency basis (25 N.J.R. 1290(a)) in order to avoid marketplace problems during the last few months that policies written by the Market Transition Facility were being nonrenewed. At that time, the Department found that some insurers were changing their practices regarding the binding of new policies in an apparent effort to discourage eligible applicants from obtaining coverage. Not only did these practices adversely affect former MTF insureds seeking coverage in the market as their MTF policies expired, but they also served to place a disproportionate burden of depopulation on those insurers that did not engage in such tactics. The rules helped provide a more "level playing field."

By their terms, these rules ceased to be operative after October 15, 1993, shortly after the last MTF policy expired on September 30, 1993. Since that time the Department has continued to monitor the marketplace to determine whether re-establishment of these rules, or other appropriate standards of conduct, are necessary. Despite the fact that residual market depopulation has been completed, there is substantial evidence that market conditions have not returned to normal. Many insurers which traditionally conducted business through agents with immediate binding authority have failed to provide that authority, which continues to constrain prompt availability of coverage. As noted when these rules were originally adopted, the Department views such practices as an attempt to avoid insuring all "eligible person" applicants, contrary to N.J.S.A. 17:33B-15. Until there is evidence that the market has, in fact, returned to normal with automobile insurance freely available from all insurers, the Department finds it necessary to re-establish these rules to promote an orderly market. In addition, these proposed amendments are intended to minimize the waiting period for coverage by an individual who applies to an insurer directly or through an agent. The proposed amendments provide consumers an assurance that insurers will either provide prompt reply coverage or reply of declination within five business days from the date a completed written application is received by the insurer.

This purpose is accomplished by repealing the provisions in N.J.A.C. 11:17A-1.2, 11:17A-1.7, 11:3-33.2, and 11:3-44.3 and 44.4 that provide that these rules are no longer operative after October 15, 1993.

The Department realizes that some applicants may not want coverage bound within the time provided by these rules. An applicant may want an effective date upon the expiration of a current policy, or simply be seeking a price quote from a direct writer through the mail. Therefore, these proposed amendments also provide that in such circumstances the insurer or producer's duty is to notify the insured within five days whether coverage will be provided or denied. The Department anticipates that this direction from the applicant may be provided on the application, without significant formality, by such indications as a desired effective date for coverage.

Finally, the Department proposes to amend N.J.A.C. 11:3-44.3 to confirm that the insurer's duty to bind coverage within five days is, of course, conditional upon receipt of the appropriate premium deposit by the insurer or its producer, based upon the premium quotation for the policy.

Social Impact

The proposed amendments provide consumers an assurance that insurers will either provide prompt coverage or notify the applicant of declination, without unnecessary delay. These amendments require all insurers and producers to respond to an application for automobile insurance within a reasonable, uniform period of time, and thus prevent insurers from seeking to avoid responsibility to provide coverage to eligible persons by delay.

Economic Impact

The proposed amendments may impose some economic burdens on those insurers and producers who are required to adjust their systems to meet these requirements. The Department notes that insurers previously met these requirements, and that therefore, the costs would be limited to costs associated with reestablishing prior practices. The Department further notes that many insurers and producers are already in compliance through their current practices of immediate binding. Any additional cost is necessary in order to assure prompt availability of coverage in the marketplace.

The Department may also realize increased costs associated with the enforcement of the proposed amendments. No economic impact on insureds is anticipated.

Regulatory Flexibility Analysis

These proposed amendments apply to all private passenger automobile insurers and their licensed producers. Some insurers are "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A 52:14B-16 et seq., and most producers are also "small businesses" as so defined. These proposed amendments will require all insurers and producers to adjust their systems and processes so as to meet the standards of these rules which require that automobile insurance be provided or declined within five business days of receipt of a completed written application.

Complying with the standards of these rules is likely to require some capital expenses and ongoing expenses related to implementing and maintaining the necessary systems and procedures. Additionally, these proposed amendments require producers and insurers to maintain certain records of their business transactions. The Department notes, however, that many insurers that transact business through their agents with immediate binding authority are already in compliance, and that all insurers were required to meet these standards from March 8, 1993 to October 15, 1993. Therefore, if the insurer is not already in compliance, the costs are limited to reestablishing and maintaining those processes used last year. The records required to be maintained are those presently maintained by prudent insurers and producers in the normal course of business.

Because the intent of these rules is to remedy marketplace problems by setting standards of performance for the provision of mandatory automobile insurance, it is inappropriate to establish different standards for those insurers and producers that are "small businesses," and therefore no different standards have been developed. Any costs which may be incurred as the result of any changes required by these rules are outweighed by the anticipated benefits to be derived by consumers.

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

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SUBCHAPTER 1. ACTIVITIES FOR WHICH A PERSON MUST BE LICENSED AS AN INSURANCE PRODUCER OR REGISTERED AS A LIMITED INSURANCE REPRESENTATIVE

11:17A-1.2 Definitions

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

...

"Declination", "denied" or "denial" means:

1.-6. (No change.)

7. Failure of an insurer to either bind coverage or issue a written denial of coverage to an applicant, **or if requested to notify the applicant whether coverage will be provided or denied,** within five business days from the date a completed written application is received that includes the information in N.J.A.C. 11:3-44.3(a). [This provision shall not be operative after October 15, 1993.]

...

11:17A-1.7 Personal private passenger automobile insurance solicitation

(a) An insurance agent, or an insurance broker who has a brokerage relationship with an insurer, when soliciting personal private passenger automobile insurance, shall:

1.-2. (No change.)

3. Upon request, submit an application of an eligible person for automobile insurance to the insurer selected by the applicant[[;]].

i. Where a producer who, pursuant to the authority granted by an insurer, has the authority to immediately bind an application for private passenger automobile insurance, determines that the applicant is an eligible person, the producer shall bind the coverage, **or if requested shall notify the applicant whether coverage will be provided or denied,** and shall transmit the application to the insurer within five business days of receipt of the completed written application. Nothing in this section shall be construed to compel an insurer to provide a producer with the authority to bind coverage immediately except as provided at N.J.A.C. 11:3-44.4. [This provision shall not be operative after October 15, 1993.]

ii.-iii. (No change.)

4.-6. (No change.)

(b) (No change.)

SUBCHAPTER 33. APPEALS FROM DENIAL OF AUTOMOBILE INSURANCE

11:3-33.2 Definitions

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

...

"Declination," "denied" or "denial" means:

1.-6. (No change.)

7. Failure of an insurer to either bind coverage or issue a written denial of coverage to an applicant, **or if requested to notify the applicant whether coverage will be provided or denied,** within five business days of the date a completed written application is received that includes the information in N.J.A.C. 11:3-44.3(a). [This provision shall not be operative after October 15, 1993.]

...

SUBCHAPTER 44. SPECIAL RULES FOR EFFECTING COVERAGE FOR PRIVATE PASSENGER AUTOMOBILE INSURANCE

11:3-44.3 Duty to provide coverage upon receipt of a completed written application

(a) (No change.)

(b) An insurer, by itself or through its producers with binding authority, shall provide coverage to an eligible person applicant who submits a completed written application that includes the information in (a) above.

1. Insurers shall have five business days from the date of receipt of a completed written application to either provide or decline insurance, **or if requested to notify the applicant whether coverage will be provided or denied.** An insurer shall obtain and retain documentation of the date of receipt of such application.

2.-3. (No change.)

(c) (No change.)

(d) [This rule shall not be operative after October 15, 1993.] **Nothing in this rule shall be deemed to require an insurer to provide coverage prior to receipt by either the insurer or its producer of the premium deposit required based upon the premium quoted by the insurer or its producer.**

11:3-44.4 Immediate binding authority for insurers with MTF rates

[(a)] Insurers which are approved by the Commissioner to use MTF rates in accordance with N.J.S.A. 17:33B-11c shall provide their producers with authority to immediately bind coverage on behalf of the insurer for all applicants to be charged MTF rates. Insurers shall amend their approved rating system, if necessary, either to incorporate MTF Manual Rule 5 which shall be deemed approved by the Commissioner; or to extend immediate binding authority to their producers in accordance with their own immediate binding procedures. This requirement shall not apply to insurers which transact personal private passenger automobile insurance directly with the public.

[(b) This rule shall not be operative after October 15, 1993.]

(a)

THE COMMISSIONER

Notice of Extension of Public Comment Period Joint Insurance Funds for Local Governmental Units Proposed Amendments: N.J.A.C. 11:15-2

Take notice that the Department of Insurance hereby extends the public comment period for the proposed amendments N.J.A.C. 11:15-2, Joint Insurance Funds for Local Governmental Units published in the New Jersey Register on July 5, 1994 at 26 N.J.R. 2725(a). The new public comment deadline will be September 30, 1994.

Submit written comments by September 30, 1994 to:

Donald Bryan
Acting Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
CN 325
Trenton, NJ 08625

LABOR

(b)

EMPLOYMENT SECURITY AND JOB TRAINING

1995 Maximum Weekly Benefit Rates
1995 Taxable Wage Base Under the Unemployment Compensation Law
1995 Contribution Rate of Governmental Entities and Instrumentalities
1995 Base Week
1995 Alternative Earnings Test
Proposed Amendments: N.J.A.C. 12:15-1.3, 1.4, 1.5, 1.6 and 1.7

Authorized By: Peter J. Calderone, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-5, 34:1-20, 34:1A-3(e), 43:21-3(c), 43:21-4(e), 43:21-7(b)(3), 43:21-7.3(e), 43:21-19(t), 43:21-27, 43:21-40 and 43:21-41.

Proposal Number: PRN 1994-500.

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A **public hearing** on the proposed amendments will be held on the following date at the following location:

Monday, September 26, 1994
10:00 A.M. to 12:00 P.M.
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey 08625-0110

Please call the Office of Regulatory Services at (609) 292-7375 if you wish to be included on the list of speakers.

Submit written comments by October 6, 1994 to:

Deirdre Webster, Regulatory Officer
Office of Regulatory Services
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

If you need this document in braille, large print or audio cassette, contact the Office of Communications at (609) 292-3221 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 12:15-1.3 establishes the 1995 maximum weekly benefit rate for benefits under the Unemployment Compensation Law and for State Plan benefits under the Temporary Disability Benefits Law.

The proposed amendment to N.J.A.C. 12:15-1.4 establishes the 1995 taxable wage base for the purpose of contributions under the Unemployment Compensation Law in accordance with N.J.S.A. 43:21-7(b)(3).

The proposed amendment to N.J.A.C. 12:15-1.5 establishes the 1995 contribution rate for governmental entities that elect to pay contributions under the Unemployment Compensation Law.

The proposed amendment to N.J.A.C. 12:15-1.6 raises the amount of earnings required in 1995 to establish a base week for an individual's claim for unemployment compensation and State Plan temporary disability benefits.

Finally, the proposed amendment to N.J.A.C. 12:15-1.7 raises the amount of base year earnings required to establish an individual's eligibility for unemployment compensation and State Plan temporary disability benefits in those instances in which the individual has not established 20 base weeks.

Social Impact

The proposed amendment to N.J.A.C. 12:15-1.3 will ensure that payments to unemployment and disability insurance recipients entitled to maximum benefits will increase in line with the upward trend of wages in the State's economy, thus preserving the real purchasing power of the benefits.

The proposed amendments to N.J.A.C. 12:15-1.4 will generate increased revenues for the Unemployment Insurance and Disability Insurance Trust Funds needed to offset the increased level of benefits for these programs, which are statutorily indexed to the upward trend of wages in the State's economy.

The proposed amendment to N.J.A.C. 12:15-1.5 will maintain the contribution rate for governmental entities that elect to pay contributions under the Unemployment Compensation Law and will have no social impact on the public.

The proposed amendment to N.J.A.C. 12:15-1.6 and 12:15-1.7 provide for the base week amount and the amount of earnings to establish eligibility, respectively, to be indexed to wage increases as benefit payments have been indexed since 1969. Some claimants who work temporarily or intermittently may not qualify for benefits under these eligibility standards.

Economic Impact

The proposed amendment to N.J.A.C. 12:15-1.3 will increase the weekly benefit rates received by individuals eligible for the maximum weekly benefit rate under the Unemployment Compensation Law and under the Temporary Disability Benefits Law beginning January 1, 1995, in compliance with statutory provisions which automatically adjust these benefit rates each year in accordance with changes in the Statewide average weekly wage. The maximum weekly benefit for Unemployment Compensation is computed as 56 and 2/3 percent of the Statewide average weekly wage in the second preceding calendar year. As of January 1, 1995, the maximum weekly benefit will increase from $347.00 to $354.00.

The maximum weekly benefit for State Plan Temporary Disability is computed as 53 percent of the Statewide average weekly wage in the second preceding calendar year. As of January 1, 1995, the maximum weekly benefit will increase from $325.00 to $331.00.

The proposed amendment to N.J.A.C. 12:15-1.4 will increase from $17,200 to $17,600 the wages of an individual employee of an employer that are subject to employer and worker contributions under the Unemployment Compensation Law, beginning January 1, 1995. The taxable wage base is computed as 28 times the Statewide average weekly wage in the second preceding calendar year.

The proposed amendment to N.J.A.C. 12:15-1.5, which will maintain the contribution rate for governmental entities at 0.4 percent of taxable wages for 1995, will result in no increase in costs to State and local government units that choose this financing option, provided that all other factors that might influence the level of contributions remain the same.

The proposed amendment to N.J.A.C. 12:15-1.6 will increase the amount an individual must earn to establish a base week under the Unemployment Compensation and Temporary Disability Benefits Laws. The amount is computed as 20 percent of the Statewide average weekly wage in the second preceding calendar year and will increase from $123.00 to $126.00 for benefit years and periods of disability commencing January 1, 1995.

The proposed amendment to N.J.A.C. 12:15-1.7 increases the alternative earnings eligibility standard under the law in those situations where the individual has not established 20 base weeks in the base year period. The amount will increase from $7,400 to $7,600 in 1995. The alternative earnings test is indexed each year at 12 times the Statewide average weekly wage in the second preceding calendar year.

The Department does not expect to experience any economic impacts as a result of the proposed amendments.

Regulatory Flexibility Statement

The proposed amendments do not impose any reporting, recordkeeping or compliance requirements on small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments affect benefit and contribution levels under the Unemployment Compensation and Temporary Disability Benefits Laws. Thus, a regulatory flexibility analysis is not required.

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

12:15-1.3 Maximum weekly benefit rates

(a) In accordance with the provisions of the Unemployment Compensation Law, the maximum weekly benefit rate for benefits under the Unemployment Compensation Law is hereby promulgated as being [$347.00] **$354.00** per week.

(b) The maximum weekly benefit rate for State Plan benefits under the Temporary Disability Benefits Law is hereby promulgated as being [$325.00] **$331.00** per week.

(c) These maximum benefits shall be effective for the calendar year [1994] **1995** [on benefit years and periods of disability commencing on or after January 1, 1994].

12:15-1.4 Taxable wage base under the Unemployment Compensation Law

In accordance with the provisions of N.J.S.A. 43:21-7(b)(3), the "wages" of any individual with respect to any one employer for the purpose of contributions under the Unemployment Compensation Law shall include the first [$17,200] **$17,600** during the calendar year [1994] **1995**.

12:15-1.5 Contribution rate of governmental entities and instrumentalities

(a) (No change.)

(b) This contribution rate shall be effective on taxable wages paid in the calendar year [1994] **1995**.

12:15-1.6 Base week

In accordance with the provisions of N.J.S.A. 43:21-19(t), the base week amount is hereby promulgated as being [$123.00] **$126.00** per

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week for [benefit years and periods of disability commencing on or after January 1, 1994] **calendar year 1995**.

12:15-1.7 Alternative earnings test

In accordance with the provisions of N.J.S.A. 43:21-4(e) and 43:21-41, in those instances in which the individual has not established 20 base weeks, the alternative earnings amount for establishing eligibility is hereby promulgated as being [$7,400] **$7,600** for benefit years and periods of disability commencing on or after January 1, [1994] **1995**.

(a)

DIVISION OF WORKPLACE STANDARDS

Carnival-Amusement Rides Inspection and Permit Fees

Proposed Amendment: N.J.A.C. 12:195-1.9

Authorized By: Peter J. Calderone, Commissioner, Department of Labor.

Authority: N.J.S.A. 5:3-31 et seq.

Proposal Number: PRN 1994-503.

A **public hearing** on the proposed amendment will be held on the following date at the following location:

Wednesday, September 28, 1994
10:00 A.M. to 12:00 P.M.
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey 08625

Please call the Office of Regulatory Services at (609) 292-7375 if you wish to be included on the list of speakers.

Submit written comments by October 6, 1994 to:

Deirdre L. Webster, Regulatory Officer
Office of Regulatory Services
Department of Labor
CN 110
Trenton, New Jersey 08625

If you need this document in braille, large print or audiocassette, please contact the Office of Communications at (609) 292-3221 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

On June 20, 1994, at 26 N.J.R. 2520(a), the Department of Labor proposed amendments to N.J.A.C. 12:195-1.9, the rules governing carnival-amusement ride inspection and permit fees. Comments received during the comment period which ended July 20, 1994 were submitted by the carnival-amusement industry and addressed the proposed fees based on the amount of time required to inspect carnival-amusement rides and whether the carnival-amusement ride owner's facility is traveling or permanent as well as the 90 day application deadline. The comments also included a suggestion that the Department consider a fixed fee based on the type of ride inspected. As a result, a third alternative which establishes a fixed fee based on the type of ride inspected (i.e., kiddie ride, major ride or super ride) is being proposed at this time. The proposed amendment would raise the current inspection and permit fee from $50.00 for a kiddie ride and $100.00 for a major ride to $100.00 for a kiddie ride and $200.00 for a major ride. It would also impose a $300.00 inspection and permit fee for super rides. In addition, the proposed amendment would require all carnival-amusement ride owners to submit their applications 30 days prior to commencing operations. Further, it would require all carnival-amusement ride owners to give the Division of Workplace Standards, after commencing operations, 72 hours advance notice before any additional rides or "book-ons" are placed into operation. Please note that the Department will adopt its amendment to this rule based on the comments received on all three alternatives from interested parties.

Social Impact

The proposed amendment is anticipated to have a positive social impact since it will ensure adequate funding of the carnival-amusement ride inspection program which is necessary for protection of public safety. In addition, the application and additional ride notification requirements have a positive social impact since they protect the public safety by ensuring that all carnival-amusement rides are safe for operation.

Economic Impact

The proposed inspection and permit fee increase will have an impact on all carnival-amusement ride owners. This higher fee is necessary to ensure protection of the public. Although these fees were raised in 1991, the increase was not nearly enough to meet the program costs as required by N.J.S.A. 5:3-39. The law requires the Department to determine a schedule of inspection and permit fees as nearly as practicable within the limits of reasonableness to bring the fees in line with the costs of implementing the provisions of the Act. The application and additional ride notification requirements imposed on carnival-amusement ride owners by the proposed amendment protect the public safety by ensuring that carnival-amusement rides are safe for operation. These requirements have minimal, if any, economic impact.

Regulatory Flexibility Analysis

The proposed amendment imposes compliance requirements on owners of carnival-amusement rides, the large majority of which are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Both the inspection and permit fee payment requirement as well as the application and additional ride notification requirements impose no need for the Department of Labor or owners to employ additional professional services for implementation. Lesser fees for small businesses are not imposed in the interest of public safety, since the uniform fees proposed fairly distribute costs and are necessary for the Department to maintain its ride inspection and permit program.

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

12:195-1.9 Inspection fee and permit

(a) [Before] **Thirty days before** commencing operations and in each year thereafter, an owner shall apply for a permit with an application form furnished by the Division and containing such information as the Division may require. The application shall be accompanied by a certificate of insurance, bond, or other security indicating that the owner has complied with N.J.A.C. 12:195-1.14.

(b) After commencing operations, 72 hours advance notice must be received by the Division before any additional rides or "book-ons" are placed in operation.

[(b)]**(c)** (No change in text.)

[(c)]**(d)** (No change in text.)

[(d)]**(e)** [Upon] **Once an** application for a permit **has been approved,** the appropriate officials of the Division of Workplace Standards shall inspect the amusement ride for which an annual fee shall be charged at the rate of **$300.00 for each super ride,** [$100.00] **$200.00** for each major ride and [$50.00] **$100.00** for each kiddie ride.

Recodify (e)-(i) as **(f)-(j)** (No change in text.)

(b)

DIVISION OF WORKERS' COMPENSATION

1995 Maximum Workers' Compensation Benefit Rates

Proposed Amendment: N.J.A.C. 12:235-1.6

Authorized By: Peter J. Calderone, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-5, 34:1-20, 34:1A-3(e) and 34:15-12a.

Proposal Number: PRN 1994-501.

A **public hearing** on the proposed amendment will be held on the following date at the following location:

Monday, September 26, 1994
10:00 A.M. to 12:00 P.M.
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey 08625-0110

Please call the Office of Regulatory Services at (609) 292-7375 if you wish to be included on the list of speakers.

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Submit written comments by October 6, 1994 to:
Deirdre Webster, Regulatory Officer
Office of Regulatory Services
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

If you need this document in braille, large print or audio cassette, contact the Office of Communications at (609) 292-3221 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

The proposed amendment establishes the 1995 maximum workers' compensation benefit rates for temporary disability, permanent total disability, permanent partial disability, and dependency.

Social Impact

The proposed amendment will ensure that payments to workers' compensation recipients entitled to maximum benefits will increase in line with the upward trend of wages in the State's economy, thus preserving the real purchasing power of their benefits.

Economic Impact

The proposed amendment will increase from $460.00 to $469.00 the weekly benefit rate received by individuals eligible for the maximum weekly benefit rate for temporary disability, permanent total disability, permanent partial disability, and dependency under the Workers' Compensation Law.

The effect of this change will be to raise the employers' workers' compensation insurance costs, provided that all other factors that might influence workers' compensation insurance costs remain the same.

The Department does not expect to experience any economic impact as a result of the proposed amendment.

Regulatory Flexibility Statement

The proposed amendment does not impose any reporting, recordkeeping or compliance requirements on small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment increases benefit rates to individuals. Thus, a regulatory flexibility analysis is not required.

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

12:235-1.6 Maximum workers' compensation benefit rates

(a) In accordance with the provisions of N.J.S.A 34:15-12a, the maximum workers' compensation benefit rate for temporary disability, permanent total disability, permanent partial disability, and dependency is hereby promulgated as being [$460.00] **$469.00** per week.

(b) This maximum compensation shall be effective as to injuries occurring in the calendar year [1994] **1995**.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF STATE POLICE

Criminal History Record Information Background Checks for Non-Criminal Justice Purposes

Proposed Amendments: N.J.A.C. 13:59

Authorized By: Colonel Carl A. Williams, Superintendent, Division of State Police, and approved by Deborah T. Poritz, Attorney General.

Authority: N.J.S.A. 53:1-20.5; 53:1-20.6 and 53:1-20.7 (P.L. 1994, c.60).

Proposal Number: PRN 1994-480.

Submit comments by October 6, 1994 to:
Colonel Carl A. Williams, Superintendent
c/o State Bureau of Identification
New Jersey State Police, P.O. Box 7068
West Trenton, New Jersey 08628-0068

The agency proposal follows:

Summary

N.J.S.A. 53:1-20.6 has been recently amended to require the Superintendent of the Division of State Police, with the approval of the Attorney General, to adopt rules and regulations authorizing the State Bureau of Identification (SBI) to disseminate criminal history background information for non-criminal justice purposes to State, county and local government agencies or to private persons and non-governmental entities, whose access to such criminal history record information is not otherwise prohibited by law. See P.L. 1994, c.60. This legislation also requires the Division of State Police to collect fees of $25.00 for the processing of fingerprint identification checks and fees of $15.00 for the processing of criminal history name search identification checks. The proposed amendments to N.J.A.C. 13:59 establish eligibility criteria and guidelines for providing New Jersey criminal history record information to authorized requesters for non-criminal justice purposes.

New Jersey is one of the few states which has not promulgated comprehensive statutory or regulatory provisions regarding the permissible uses and dissemination of criminal history record information for non-criminal justice purposes. In recent years there has been a gradual, but steady, national trend toward providing access to computerized criminal conviction records to both governmental and private entities for non-criminal justice purposes, especially for employment, licensing and volunteer services.

At the national and state levels there is a hierarchy of non-criminal justice users and purposes. At the top of the pyramid are governmental agencies which must secure criminal history record information for purposes of screening the appointments or employment of officials who will occupy sensitive or high-level non-criminal justice positions. A second tier consists of governmental agencies which obtain criminal history information for routine non-criminal justice employment or licensing purposes. A third level consists of private employers, private organizations, either for profit or not, and licensed professional groups (for example, private detectives and attorneys). This third category typically obtains State criminal history record information for purposes of employment, screening of membership or litigation. Lastly, there is the general public. Only a few states have made computerized criminal history record information available to the general public. The majority of the states and the Federal government require requesters to have legitimate uses for criminal history information before it will be made available. These amendments follow the lead of the majority of states.

Pursuant to Federal regulations, each state is free to develop its own dissemination criteria for in-state criminal history record information. See 28 CFR §20.1 et seq. This includes both conviction and non-conviction data. There are numerous statutes and regulations which permit various New Jersey governmental entities or private entities to access the SBI for criminal history record information for non-criminal justice purposes. These statutes and regulations, however, have been promulgated on an *ad hoc* basis. The need for criminal history record information for specific employment and licensing purposes has been addressed on a case-by-case basis by both the legislative and executive branches.

Executive Order No. 9(1968) and its successor, Executive Order No. 123(1985), both exempt criminal history record information from the category of records automatically available to the public under New Jersey's Right to Know Law, N.J.S.A. 47:1A-1 et seq. In view of this restriction, it is appropriate to establish both the category of users and permissible uses of criminal history record information for non-criminal justice purposes.

The amendments to N.J.A.C. 13:59 establish a comprehensive regulatory scheme identifying categories of authorized users and the permissible uses of New Jersey criminal history information for non-criminal justice purposes. The rule amendments attempt to strike an appropriate balance between the competing interests of subjects of authorized criminal history inquiries and persons and entities who must make informed judgments pertaining to prospective employees, volunteers, independent contractors and other persons who intend to provide services. The amended rules will permit the release of criminal history record information to authorized persons or entities while, at the same time, protect the interests of the subjects of the inquiries by providing safeguards against the improper use of records and the release of inaccurate information.

The amended rules distinguish between New Jersey criminal history record information and national criminal history record information.

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Unless authorized by Federal or State statute to obtain Federal and out-of-State criminal history record information, most users will be permitted only to access New Jersey computerized criminal history record information. The extent of that information is further restricted to records of actual convictions or records of active charges or arrests, regardless of their age, which have not been lawfully expunged.

"Authorized requesters" are persons, agencies or entities authorized by a Federal or State statute, rule or regulation, executive order, administrative code, local ordinance, resolution, **or by these amended regulations,** to obtain New Jersey criminal history record information accessed from the computer databases of the New Jersey Criminal Justice Information System, the National Law Enforcement Telecommunications System (NLETS) or other states' computerized repositories containing criminal history record information. In the case of "national requesters," that is, those allowed to receive Federal and out-of-State data, **all** criminal history record information from whatever source will be disseminated. This is consistent with existing Federal practice.

N.J.A.C. 13:59-1.2 establishes four categories of authorized recipients of New Jersey criminal history record information. In addition to any Federal or State laws, regulations, executive orders, ordinances, or resolutions presently authorizing the dissemination of criminal history record information, N.J.A.C. 13:59-1.2(a) identifies those requesters who are authorized to obtain records of convictions and pending arrests from the SBI. The authorized categories of recipients are:

1. Governmental entities of this State, the Federal government or any other state for any official governmental purpose, including, but not limited to, employment, licensing and the procurement of services;

2. Private persons or non-governmental entities of this State for purposes of determining a persons' qualifications for employment, volunteer work or performance of other services;

3. Attorneys-at-law licensed by the State of New Jersey for their use in any contested matters docketed in any State or Federal courts or administrative agencies of this State; and

4. Private detectives licensed by the Division of State Police for purposes of obtaining information in furtherance of the performance of their statutorily enumerated functions.

N.J.A.C. 13:59-1.2(a)2 permits any private entities or persons to obtain New Jersey criminal history information regarding a person's qualifications for employment, volunteer services or the performance of any other services, provided that the procedures and safeguards established by the regulations are followed. All employers in this State will be entitled to obtain New Jersey criminal history record information regarding prospective employees or persons already in their employ. All volunteer groups, including those that work with children, the elderly, or other vulnerable persons, will be permitted to access to the State Police computerized databases for evidence of convictions which may adversely impact on the fitness of persons to work with or provide particular volunteer services. Persons or entities who wish to retain the services of independent contractors will be able to obtain New Jersey criminal history record information for purposes of determining the subjects' fitness to perform the services in question.

N.J.A.C. 13:59-1.2(a)3 permits attorneys-at-law to obtain criminal history record information provided that it will be used only in the furtherance of litigation involving matters docketed in any State or Federal courts or administrative agencies of this State.

In accordance with N.J.A.C. 13:59-1.2(a)4, licensed private detectives will be eligible to procure New Jersey criminal history record information solely for purposes of performing their statutorily authorized functions as specifically enumerated and limited by N.J.S.A. 45:19-9(a)1 to 9.

Governmental and private entities or persons are required to obtain the signatures of the subjects of criminal history record requests on the requisite forms prior to their submission to the SBI. The subjects' signatures are not required, however, in the cases of private detectives and attorneys-at-law who by the Rules of Court or statute, have the authority to utilize criminal history record information on an *ex parte* basis. Attorneys-at-law may obtain criminal history record information through the issuance of subpoenas.

Existing forms have been revised and new forms have been developed by the SBI which will be used by entities or persons other than attorneys-at-law to obtain criminal history record information. Governmental or private entities, private persons and licensed private detectives must, on the SBI forms, provide signed certifications specifying that: (1) the requesters are authorized to receive criminal history record information in conformity with the regulations, (2) that such records will be used by the requesters solely for the purposes enumerated by the relevant provisions of the regulations, and (3) that such records will not be disseminated to persons for unauthorized purposes.

Private and governmental requesters who are requesting criminal history records for purposes of screening persons for employment or for the providing of services, whether compensated or not, must also certify on the SBI forms that: (1) they will furnish the subjects of their inquiries with adequate notice to complete or challenge the accuracy of the records provided by the SBI, (2) if requested by the subjects of the inquiries, they will provide them with a reasonable period of time to correct or complete any records provided to them by the SBI and, (3) that they will not presume guilt for any pending arrests or charges indicated on records received from the SBI.

The amended rules also require requesters to destroy criminal history records after they have served their intended and authorized purposes. The amendments further provide that unless fingerprints accompany record inquiries, the SBI cannot guarantee that the records disseminated relate to the persons who are the subjects of the requests. As observed, persons who are the subjects of record requests must be furnished with an opportunity to complete or challenge the accuracy of the information contained in the records prior to being disqualified from holding any employment or from the performance of any services, whether or not compensated.

The amended rules provide that when name search checks are requested, the requesters must provide the SBI with the subject's name, date of birth, and if voluntarily provided in accordance with the Federal Privacy Act, the subject's social security number. A request for criminal history record information through a name check cannot be processed without, at a minimum, the subject's name and date of birth.

The fees charged for purposes of processing fingerprint identification checks and criminal history name search identification checks have been changed to reflect the new statutory requirements. A $25.00 fee must be collected for the purposes of fingerprint identification checks and a $15.00 fee for processing criminal history name search checks. As provided by statute, these fees are in addition to any fee which the Federal government may require for the processing of Federal criminal history checks for non-criminal justice purposes.

Social Impact

The proposed amendments establish categories of authorized requesters for criminal history record information for non-criminal justice purposes. Both public and private sector persons and entities have a legitimate need to make informed judgments pertaining to prospective or current employees, licensees or independent contractors. Volunteer organizations, and other entities or groups which procure services, whether or not compensated, will be provided with criminal history record information which may be of assistance in making informed judgments regarding whether persons should be employed, licensed or permitted to provide services for persons, whether as volunteers or for compensation. For example, the recipients of such intended services may be children, senior citizens and the mentally or physically infirm. The subjects of the inquiries will be screened for prior convictions or pending charges which may adversely impact on their eligibility or fitness to perform such services.

The amendments strike an appropriate balance between the competing interests of authorized requesters and the subjects of authorized inquiries. The amendments promote the public welfare by providing for the release of relevant criminal history record information while, at the same time, protecting the subjects of the inquiries by providing adequate safeguards against the inappropriate use of record information. Requesters must certify that they will afford subjects of inquiries with the opportunity to challenge or correct any information contained in records prior to disqualifying them from performing any services. The permissible uses of criminal history records are limited to those authorized by the amended rules. Recipients may not disseminate records to persons not authorized to receive same and they are directed to destroy the records immediately upon completion of their intended use. Public and private employers and public and private providers of services will benefit from receiving information which may serve to protect the public from harm. At the same time, subjects of criminal history inquiries will be assured that inaccurate or incomplete information will not adversely affect them.

Economic Impact

The proposed amendments codify recently enacted legislation regarding the permissible fees which must be collected by the Division of State Police for the processing of fingerprint and name search requests.

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The amended rules will result in a greater number of requests for criminal history record information and, thereby, cause the amount of fees collected by the Division of State Police to be increased. Pursuant to statute, (N.J.S.A. 53:1-20.7) these moneys may be used only for the expenses of the State Bureau of Identification, the expenses of the Department of Law and Public Safety related to processing criminal history record background checks and, subject to the approval of the Director of the Division of Purchases and Accounting in the Department of the Treasury, for the purchase and equipping of new or replacement State Police vehicles.

Regulatory Flexibility Analysis

The amended rules do not impose any mandatory costs upon small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Any costs incurred by small businesses as defined by the Act will be voluntary in nature and amount. All small businesses will be subject to the same fees for obtaining criminal history record information as any other entities or persons eligible to receive such information pursuant to existing law or these regulations. The same is true concerning the compliance by small businesses with restrictions on the dissemination of criminal history records.

The amended rules minimize, to the extent possible, any adverse economic impact on small businesses. The fees for criminal history records are statutorily mandated. Small businesses need not incur the fees unless they voluntarily determine to access the SBI for criminal history record information. Compliance requirements are identical for any entities or persons receiving criminal history record information for non-criminal justice purposes. The compliance requirements established by the amendments are necessary to promote the general public health, safety and welfare, and to protect the individual rights of subjects of criminal history record inquiries.

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

13:59-1.1 Definitions

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

"Access" means to instruct, communicate with, store data in, gain entry into, retrieve data from, disseminate, or otherwise make use of any computer, computer system or computer network.

"Administration of criminal justice or criminal justice purpose" includes:

1. The detection, apprehension, detention, pretrial and post-trial release, prosecution, adjudication, correction, supervision or rehabilitation of accused persons or criminal[s] offenders;

2. The hiring of persons for employment by criminal justice agencies; and

3. Criminal identification activities, including the accessing of the New Jersey Criminal Justice Information System, **the National Law Enforcement Telecommunications System (NLETS) or other states' computerized repositories containing criminal history record information,** by criminal justice agencies for the purposes set forth in paragraphs 1 and 2 of this definition.

"Attorney General" includes the Attorney General of New Jersey and, when authorized by the Attorney General to access Criminal History Record Information, his or her Assistants and Deputies.

"Authorized [agency] **requester**" means any **person,** agency **or entity, including national requesters,** authorized by [a] Federal or State statute, rule or regulation, executive order, administrative code [or], local ordinance, **resolution or by this chapter,** to [access] **obtain dissemination of** Criminal History Record Information [maintained as part of] **accessed from** the computerized databases of the New Jersey Criminal Justice Information System, **the National Law Enforcement Telecommunications System (NLETS) or other states' computerized repositories containing criminal history record information** for non-criminal justice purposes, including licensing and/or employment [purposes].

"Criminal History Record Information" or "CHRI" means information collected by criminal justice agencies [regarding individuals] **concerning persons** and stored in the computerized databases of the New Jersey **State Police SBI** Criminal History Information System, **the National Law Enforcement Telecommunications System (NLETS) or other states' computerized repositories containing criminal history record information** consisting of identifiable descriptions and notations of arrests, indictments, or other formal criminal charges, and any dispositions arising therefrom, including **convictions, dismissals, acquittals,** sentencing, correctional supervision and release.

"Criminal justice agency" means:

1. The courts of the State of New Jersey; and

2. A governmental [agency] **entity** of the State of New Jersey [or any sub-unit thereof] which performs functions pertaining to the administration of criminal justice pursuant to [a] statute, ordinance, **resolution** or regulation, and which allocates a substantial portion of its budget to the administration of criminal justice.

"Dissemination of Criminal History Record Information" means the process whereby the State Bureau of Identification accesses the criminal history record databases of the New Jersey State Police SBI Criminal Justice Information System, the National Law Enforcement Telecommunications System (NLETS) or other states' computerized repositories containing criminal history record information to compare sets of classified fingerprints or to conduct name search requests to determine if New Jersey, Federal or out-of-State criminal history record information exists for persons identified by authorized requesters, and includes:

1. The dissemination by the State Bureau of Identification to authorized requesters, other than national requesters, of all records of convictions in New Jersey State courts and all records of pending arrests and charges for violations of New Jersey laws, regardless of their age, unless such records have been expunged pursuant to law; or

2. The dissemination by the State Bureau of Identification to authorized national requesters of all criminal history record information from the databases of the New Jersey State Police SBI Criminal Justice Information System, the National Law Enforcement Telecommunications System (NLETS) or other states' computerized repositories containing criminal history record information, unless such records have been expunged by law.

"Fee" means that cost established by law for processing all criminal history record requests for authorized [agencies] **requesters** for noncriminal justice purposes, including licensing and/or employment.

"Governmental entities" include the State, any office, department, division, bureau, board, commission or agency of the State, and any county, municipality, district, public authority, public agency and any other political subdivision or public body within the State.

["Licensing and/or employment purpose" means any noncriminal justice purpose, including licensing and/or employment, for which applicant fingerprints or name search requests are submitted by authorized agencies as required or permitted by a Federal or State Statute, rule or regulation, executive order, administrative code provision or local ordinance to the State Bureau of Identification for the processing and obtaining of Criminal History Record Information background checks.]

"National requesters" shall mean persons, agencies or entities authorized by Federal or State statute to obtain dissemination of Federal and out-of-State criminal history record information accessed by the State Bureau of Identification from the computerized databases of the New Jersey State Police SBI Criminal Justice Information System, the National Law Enforcement Telecommunications System (NLETS) and other states' computerized repositories containing criminal history record information.

"Non-criminal justice purpose" means any purpose, other than administration of criminal justice or criminal justice purpose, including employment and licensing, for which applicant fingerprints or name search requests are submitted by authorized requesters, as required or permitted by a Federal or State statute, rule or regulation, executive order, administrative code provision, local ordinance, resolution or by this chapter, to the State Bureau of Identification for the dissemination of criminal history record information.

["Processing Criminal History Record background checks" means:

1. The process whereby the State Bureau of Identification, at the request of an authorized agency, accesses the criminal history record

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data base of the New Jersey Criminal Justice Information System to compare a set of classifiable fingerprints or to conduct a name search request to determine if New Jersey Criminal History Record Information exists for the person identified by the authorized agency; and

2. The furnishing by the State Bureau of Identification to an authorized agency of all records of convictions in a New Jersey State court, and all records of pending arrests and/or charges for violations of New Jersey laws which the New Jersey Criminal Justice Information System indicates as having no dispositions, regardless of their age, unless such records have been expunged pursuant to law.]

"Public servant" means any officer or employee of State government or of any political subdivision or public body of the State, including any advisor or consultant retained by government to perform a governmental function.

"State Bureau of Identification, (S.B.I.)" means the State Bureau of Identification created by P.L. 1930, c.65 as a bureau within the Division of State Police.

"Superintendent" shall mean the Superintendent of the New Jersey Division of State Police (P.L. 1984, c.439, §7).

13:59-1.2 Additional dissemination authorized by this chapter

(a) In addition to any other Federal or State laws, regulations, executive orders, ordinances or resolutions authorizing the dissemination of criminal history record information, the following requesters are authorized to obtain from the SBI all records of convictions in New Jersey State courts and, regardless of their age, all records of pending arrests and charges for violations of New Jersey laws, unless such records have been expunged pursuant to law:

1. Governmental entities of this State, the Federal government or any other state for any official governmental purposes, including, but not limited to, employment, licensing and the procurement of services;

2. A person or non-governmental entity of this State for purposes of determining a person's qualifications for employment, volunteer work or other performance of services;

3. Attorneys-at-law licensed by the State of New Jersey for use in any contested matters docketed in any State or federal courts or administrative agencies of this State; and

4. Private detectives licensed by the Division of State Police pursuant to N.J.S.A. 45:19-8 et seq., for purposes of obtaining information in furtherance of the performance of their statutorily authorized functions, as specifically enumerated by N.J.S.A. 45:19-9(a)1 to 9.

(b) Requesters authorized by (a)1 and 2 above to obtain criminal history record information shall, on the completed forms or fingerprint cards prescribed pursuant to N.J.A.C. 13:59-1.4, obtain the signatures of the subjects of the requests. Requesters authorized by (a)1 and 2 and (a)4 above shall sign certifications on the forms prescribed by the Division of State Police. The signed certifications shall specify that:

1. The requesters are authorized to receive criminal history record information in conformity with (a) above;

2. That such records shall be used by the requesters solely for the purposes enumerated by the relevant provision of (a) above;

3. That such records will not be disseminated to persons for unauthorized purposes; and

4. That the requesters will otherwise comply with the provisions of N.J.A.C. 13:59-1.6(a).

(c) Except in cases of attorneys-at-law of this State and licensed private detectives proceeding under (a)3 and 4 above, requesters authorized by (a) above to obtain criminal history record information shall sign certifications on the forms prescribed by the Division of State Police certifying:

1. They will furnish the subjects of their inquiries with adequate notice to complete or challenge the accuracy of the records provided by the SBI;

2. If requested by the subjects of the inquiries, they will provide them with a reasonable period of time to correct or complete any records provided by the SBI;

3. They will not presume guilt for any pending arrests or charges indicated on records received from the SBI; and

4. That they will otherwise comply with the provisions of N.J.A.C. 13:59-1.6(b).

13:59-[1.2]**1.3** Fees

(a) A fee of [$12.00] **$25.00** shall be [imposed and used exclusively] **collected** by the SBI for the purpose of processing fingerprint identification checks.

(b) A fee of [$8.00] **$15.00** shall be [imposed and used exclusively] **collected** by the SBI for the purpose of processing criminal history name search identification checks.

[(c) These fees shall be in addition to any other fee required by law.]

[(d)]**(c)** In addition to the fees collected in (a)[,] **and** (b) [and (c)] above, a non-refundable fee shall be collected from each applicant to pay for the [actual] cost of securing and processing [Federal] **of national** criminal record checks for non-criminal justice purposes[,] where such checks are authorized by law.

(d) Unless otherwise provided by law, all fees collected for accessing and disseminating criminal history record information shall be deposited in the "Criminal History Record Information Fund".

(e) New Jersey State governmental entities may submit a "Memo Processed Certificate of Debit and Credit" for the applicable amount with each group of submissions to the State Bureau of Identification.

(f) Any form of payment other than that specified in this section shall be first approved by the Superintendent.

[13:59-1.3 Separation of fees

All noncriminal justice licensing and/or employment requests from authorized agencies will be subject to the prescribed fees as set forth at N.J.A.C. 13:59-1.2. All such fees shall be deposited in the "Criminal History Record Information Fund" established pursuant to N.J.S.A. 53:1-20.7.]

13:59-1.4 Prescribed forms

(a) Requests for Criminal History Record Information by authorized [agencies] **requesters** shall be on forms as prescribed by this section[.]**, except that attorneys-at-law of the State of New Jersey may obtain criminal history record information pursuant to N.J.A.C. 13:59-1.2(a)3 upon the payment of the fees prescribed by N.J.A.C. 13:59-1.3 by the lawful issuance of subpoenas. Such subpoenas shall be issued in accordance with applicable rules of court and administrative procedure and shall be on notice to all parties required to receive same.**

(b) The prescribed forms shall be used to access Criminal History Record Information for any requests from authorized [agencies] **requesters** for non-criminal justice purposes, including licensing and/or employment.

(c) For fingerprint identification purposes an "Applicant" fingerprint card [(]SBI-19[)] must be used. The exception to this rule will be for a firearms application which requires a "Firearms Application" card [(]SBI-19A[)].

1. Fingerprint card [(]SBI-19 or SBI-19A[)]: The fee as prescribed in this [sub]chapter, in the form of a cashiers check, certified check or money order payable to the "Division of State Police-SBI," must be stapled to the lower left corner of the "Applicant" fingerprint card [(]SBI-19[)] or "Firearms Application" fingerprint card [(]SBI-19A[)] and submitted to the State Bureau of Identification **for processing.**

2. For authorized requesters submitting fingerprint cards pursuant to the provisions of N.J.A.C. 13:59-1.2(a)1 and 2, the card shall be accompanied by "Request for Criminal History Record Information" form SBI-212B which must be completed in its entirety.

(d) For name search identification purposes, a "Request for Criminal History Record Information" form SBI-212 or SBI-212A must be used. **In cases of name search identification requests pursuant to 13:59-1.2(a)(1), (2) and (4), a "Request for Criminal History Record Information" form SBI-212B must be used.**

1. "Request for Criminal History Record Information Forms" (SBI-212, [or] SBI-212A**, or SBI-212B**): [This] **These** forms [will] **shall** be [filled out] **completed** in [its] **their** entirety and [must] **shall**

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contain all the [required] information [necessary] required to complete the check, **including the name of the subject, the date of the birth of the subject and, when authorized pursuant to (d)2 above, the social security number of the subject. SBI forms submitted by private detectives and subpoenas issued by the attorneys-at-law of this State pursuant to N.J.A.C. 13:59-1.2(a)3 and 4, shall recite the name of the subject and the subject's date of birth.**

2. Pursuant to the Privacy Act of 1974 (P.L. 93-579), the forms prescribed by this subsection shall advise the subjects of name searches that the furnishing of their social security numbers is voluntary and that their social security numbers will only be used for purposes of processing requests for criminal history record information.

3. The fee as prescribed in this [sub]chapter, in the form of a cashiers check, certified check or money order payable to the Division of State Police (SBI) must be stapled to the front of each SBI-212, [or] SBI-212A **or SBI-212B** form [and] submitted to the State Bureau of Identification **for processing**.

[13:59-1.5 Acceptable form of payment

(a) A cashier check, certified check or money order made payable to the "Division of State Police-SBI" will be accepted.

(b) New Jersey State agencies shall submit a "Memo Processed Certificate of Debit and Credit" for the applicable amount with each group of submissions. Any other form of payment is unacceptable unless approved by the Superintendent of State Police.

13:59-1.6 Superintendent's waiver provision

Nothing in this section shall prohibit the Superintendent of State Police from providing this processing service without the collection of fees from the applicant or in other circumstances which in his sole discretion he deems appropriate if the applicants would not receive a wage or salary for the time and services they provide to an organization or who are considered volunteers. In those circumstances where the Superintendent of State Police determines to provide this processing service without the collection of fees to the individual applicants, the superintendent may assess the fee for providing this service on behalf of the applicants to any department of State, county or municipal government which is responsible for operating or overseeing that volunteer program.]

13:59-[1.5]**1.7** Rejection and resubmission procedures

(a) Any fingerprint card or Request for Criminal History Record Information form which is rejected will be returned with the submitted fee to the authorized [agency] **requester**. The procedure as set forth at N.J.A.C. 13:59-1.4 will be utilized for resubmissions with the following exceptions.

1. Fingerprint cards that cannot be classified will be rejected and returned to the authorized [agencies] **requesters.** [but the] **The** fees which accompanied the fingerprint cards will be retained by the SBI. Upon resubmission, [staple] the rejected fingerprint card **will be stapled** to the newly taken fingerprint card and [submit] both cards **will be submitted** [along] with the original rejection form to the SBI. [This procedure will ensure that no] **No** additional charges will be assessed for [a] resubmitted fingerprint cards.

13:59-[1.8]**1.6** Limitations on access and use of Criminal History Record Information (CHRI)

(a) Access to criminal history record information for non-criminal justice purposes, including licensing and[/or] employment, is restricted to authorized [agencies] **requesters** as defined by this chapter. Such [agencies] **requesters** shall limit their use of criminal history record information solely to the authorized purpose for which it was obtained[,] and Criminal History Record Information furnished by the SBI shall not be disseminated by authorized requesters to [unauthorized persons within agencies or disseminated outside of the agencies] **persons not** authorized to receive the records **for authorized purposes**.

(b) If Criminal History Record Information [is to] **may** be used to disqualify **a person from holding any position, employment or license or performing any services, whether compensated or uncompensated,** [an applicant,] the person acting on behalf of the authorized [agency] **requester** making [the] **such** determination [of suitability for licensing and/or employment should] **shall** provide the applicant with [an opportunity] **adequate notice** to complete [and/]or challenge the accuracy of any information obtained in the Criminal History Record. [In this regard, the] **The** applicant [should] **shall** be afforded a reasonable period of time to correct [and/]or complete the record. A person [should] **shall** not be presumed guilty of any pending charges or arrests for which there [is] **are** no final dispositions indicated on the record.

(c) [Except in those instances where no Criminal History Record Information is found at the time of the request, the] **The** State Bureau of Identification shall prominently display the following on any record [accessed] **disseminated** for noncriminal justice purposes, including, employment [and/]or licensing[.];

Use of this record is governed by Federal and State regulations. Unless fingerprints [accompany] **accompanied** your inquiry, the State Bureau of Identification cannot guarantee this record relates to the person [in whom you have an interest] **who is the subject of your request**. Use of this record shall be limited solely to the authorized purpose for which it was given and **it** shall not be disseminated to any unauthorized persons. This record shall be destroyed after it has served its intended and authorized purposes. Any person violating Federal or State regulations governing access to Criminal History Record Information may be subject to criminal and/or civil penalties.

If this record [is used to] **may** disqualify an applicant[,] **for any purpose,** the [official] **person** making the determination [of suitability for licensing and/or employment should] **shall** provide the applicant with an opportunity to complete and[/or] challenge the accuracy of the information contained in the Criminal History Record. [In this record, the] **The** applicant [should] **shall** be afforded a reasonable period of time to correct and[/or] complete this record. A person is not presumed guilty of any charges or arrests for which there [is] **are** no final dispositions indicated on the record. This record is certified as a true copy of the Criminal History Record Information on file for the assigned State identification number.

(d) Criminal justice agencies, for purposes of the administration of criminal justice, [and the Attorney General for any purpose related to the performance of his or her official duties,] may access Criminal History Record Information (CHRI), Computerized Criminal History-Automated Name Index (CCH/ANI) or State Crime Information System data (SCIC) from the [data base] **databases** of the New Jersey **State Police SBI** Criminal Justice Information System[.] **or NLETS or other states' repositories of computerized CHRI. The Attorney General, or his or her designee, may access the databases of the New Jersey Criminal Justice Information System for any official purpose.**

(e) Except when authorized as a lawful exercise of official duties in conformity with (d) above, or unless officially authorized for noncriminal justice purposes, no public servant shall access or permit any other person to access Criminal History Record Information (CHRI), the Computerized Criminal History-Automated Name Index (CCH/ANI), [or] State Crime Information Center data (SCIC) stored in the New Jersey **State Police SBI** Criminal Justice Information System, **NLETS or other states' repositories of computerized CHRI**. This prohibition shall include use of any computer, computer system or computer network which may access CHRI, CCH/ANI, and SCIC stored in the New Jersey Criminal Justice Information System, **NLETS or other states' repositories of computerized CHRI**. Access by any public servant to CHRI, CCH/ANI and SCIC stored in the New Jersey **State Police SBI** Criminal Justice Information System, **NLETS or other states' repositories of computerized CHRI** shall be in strict conformity with these rules, the Federal regulations (28 CFR §20.1 et seq.) and any "New Jersey Criminal Justice Information System Users Agreement" entered into by any criminal justice agency and the Division of State Police.

(f) Any criminal justice agency which has executed a "New Jersey Criminal Justice Information System Users Agreement," and which accesses Criminal History Record Information (CHRI), Computerized Criminal History-Automated Name Index (CCH/ANI) [or] State Crime Information System Data (SCIC) stored in the New Jersey **State Police SBI** Criminal Justice Information System, **or**

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NLETS or other states' repositories of computerized CHRI for the performance of administration of criminal justice functions, shall be provided with the full text of these rules by the State Bureau of Identification.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route U.S. 46 including Route U.S. 1, 9 and 46

Knowlton Township, White Township, Liberty Township, Independence Township and the Town of Hackettstown in Warren County; Washington Township, Mount Olive Township, Netcong Borough, Roxbury Township, Mine Hill Township, Wharton Borough, Town of Dover, Rockaway Township, Rockaway Borough, Denville Township, Mountain Lakes Borough, Parsippany-Troy Hills Township and Montville Township in Morris County; Fairfield Township in Essex County; Wayne Township, Totowa Borough, West Paterson Borough, Little Falls Township, City of Clifton, City of Paterson in Passaic County, and Elmwood Park Borough, City of Garfield, Saddlebrook Township, Borough of Lodi, Borough of Hasbrouck Heights, Borough of Teterboro, South Hackensack Township, Borough of Little Ferry, Ridgefield Park Village, Ridgefield Borough, Palisades Park Borough and the Borough of Fort Lee in Bergen County

Proposed Repeal and New Rule: N.J.A.C. 16:28-1.10

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.

Proposal Number: PRN 1994-491.

Submit comments by October 6, 1994 to:

William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering
and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to repeal and establish a new rule at N.J.A.C. 16:28-1.10 to establish revised speed limit zones along Route U.S. 46, including Route U.S. 1, 9 and 46, for its entire length from Knowlton Township, White Township, Liberty Township, Independence Township and the Town of Hackettstown in Warren County, Washington Township, Mount Olive Township, Netcong Borough, Roxbury Township, Mine Hill Township, Wharton Borough, Town of Dover, Rockaway Township, Rockaway Borough, Denville Township, Mountain Lakes Borough, Parsippany-Troy Hills Township and Montville Township in Morris County, Fairfield Township in Essex County, Wayne Township, Totowa Borough, West Paterson Borough, Little Falls Township, City of Clifton, City of Paterson in Passaic County, and Elmwood Park Borough, City of Garfield, Saddlebrook Township, Borough of Lodi, Borough of Hasbrouck Heights, Borough of Teterboro, South Hackensack Township, Borough of Little Ferry, Ridgefield Park Village, Ridgefield Borough, Palisades Park Borough and the Borough of Fort Lee in Bergen County.

The proposed new rule will improve the flow of traffic and enhance safety along the highway system.

As part of the Department's review of current conditions and a letter dated March 14, 1994, from Mayor Jessie Thompson of the Township of Knowlton in Warren County, in which he requested reduced speed limit zones along Route U.S. 46, including Route U.S. 1, 9 and 46, due to accidents, increased truck traffic and the buildup of the entire area in Knowlton Township, a traffic investigation was conducted by the Bureau of Traffic Engineering and Safety Programs. The investigation concluded that conflicting speed zones exist along the entire length of Route U.S. 46, including Route U.S. 1, 9 and 46, and recommended that numerous changes be made to the format of the existing rule. Therefore, the proposed new rule at N.J.A.C. 16:28-1.10 is warranted.

Appropriate signs shall be erected in the areas where the speed limit zones have been changed.

Social Impact

The proposed new rule will establish "speed limit" zones along Route U.S. 46 including Route U.S. 1, 9 and 46 for its entire length from Knowlton Township, White Township, Liberty Township, Independence Township and the Town of Hackettstown in Warren County, Washington Township, Mount Olive Township, Netcong Borough, Roxbury Township, Mine Hill Township, Wharton Borough, Town of Dover, Rockaway Township, Rockaway Borough, Denville Township, Mountain Lakes Borough, Parsippany-Troy Hills Township and Montville Township in Morris County, Fairfield Township in Essex County, Wayne Township, Totowa Borough, West Paterson Borough, Little Falls Township, City of Clifton, City of Paterson in Passaic County, and Elmwood Park Borough, City of Garfield, Saddlebrook Township, Borough of Lodi, Borough of Hasbrouck Heights, Borough of Teterboro, South Hackensack Township, Borough of Little Ferry, Ridgefield Park Village, Ridgefield Borough, Palisades Park Borough and the Borough of Fort Lee in Bergen County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed new rule at N.J.A.C. 16:28-1.10 does not place any reporting, 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. The proposed new rule primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

Full text of the proposed repeal can be found in the New Jersey Administrative Code at N.J.A.C. 16:28-1.10.

Full text of the proposed new rule follows:

16:28-1.10 Route U.S. 46, including Route U.S. 1, 9 and 46

(a) The rate of speed designated for certain parts of State highway Route U.S. 46 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic in Warren, Morris, Essex, Passaic and Bergen Counties:

i. Warren County:

(1) Knowlton Township:

(A) Zone 1: 45 miles per hour between Route I-80, Route U.S. 46 and Route 94 Interchange and 1,900 feet east of Walnut Road (approximate mileposts 0.0 to 1.20); thence

(B) Zone 2: 50 miles per hour between 1,900 feet east of Walnut Road and 800 feet west of the Erie Lackawanna Railroad overpass (approximate mileposts 1.20 to 2.40); thence

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(C) Zone 3: 45 miles per hour between 800 feet west of the Erie Lackawanna Railroad overpass and Knowlton Road, except for a 35 mile per hour speed limit when passing through the Knowlton Township Elementary School zone while "35 MPH When Flashing" signs are operating during recess or while children are going to or leaving school during opening or closing hours (approximate mileposts 2.40 to 3.84); thence

(D) Zone 4: 50 miles per hour between Knowlton Road and the Knowlton Township-White Township corporate line (approximate mileposts 3.84 to 5.50); thence

(2) White Township:

(A) Zone 1: 50 miles per hour between the Knowlton Township-White Township corporate line and 1,900 feet west of Route 31, except for a 35 mile per hour speed limit when passing through the White Township Elementary School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school during opening or closing hours (approximate mileposts 5.50 to 9.63); thence

(B) Zone 2: 45 miles per hour between 1,900 feet west of Route 31 and 550 feet east of Route 31 (approximate mileposts 9.63 to 10.14); thence

(C) Zone 3: 50 miles per hour between 550 feet east of Route 31 and the White Township-Liberty Township corporate line (approximate mileposts 10.14 to 12.55); thence

(3) Liberty Township:

(A) Zone 1: 50 miles per hour between the White Township-Liberty Township corporate line and the Liberty Township-Independence Township corporate line (approximate mileposts 12.55 to 15.79); thence

(4) Independence Township:

(A) Zone 1: 40 miles per hour between the Liberty Township-Independence Township corporate line and 650 feet east of Baker Mill Road, except for a 25 mile per hour speed limit when passing through the Central School zone while "25 MPH When Flashing" signs are operating during recess or while children are going to or leaving school during opening or closing hours (approximate mileposts 15.79 to 17.75); thence

(B) Zone 2: 45 miles per hour between 650 feet east of Baker Mill Road and the Independence Township-Hackettstown Town corporate line (approximate mileposts 17.75 to 20.62); thence

(5) Hackettstown Town:

(A) Zone 1: 35 miles per hour between the Independence Township-Hackettstown Town corporate line and 250 feet east of Prospect Street (approximate mileposts 20.62 to 21.00); thence

(B) Zone 2: 30 miles per hour between 250 feet east of Prospect Street to the bridge over the Musconetcong River, Warren County-Morris County corporate line (approximate mileposts 21.00 to 21.82); thence

ii. Morris County:

(1) Washington Township:

(A) Zone 1: 30 miles per hour between the bridge over the Musconetcong River, Warren County-Morris County corporate line and 180 feet west of Old Mine Road (approximate mileposts 21.82 to 21.93); thence

(B) Zone 2: 35 miles per hour between 180 feet west of Old Mine Road and the Mine Brook Bridge (approximate mileposts 21.93 to 22.48); thence

(C) Zone 3: 45 miles per hour between the Mine Brook Bridge and the Washington Township-Mount Olive Township corporate line (approximate mileposts 22.48 to 23.32); thence

(2) Mount Olive Township:

(A) Zone 1: 45 miles per hour between the Washington Township-Mount Olive Township corporate line and 800 feet west of Schooley Mountain Road-Sand Shore Road (approximate mileposts 23.32 to 24.48); thence

(B) Zone 2: 50 miles per hour between 800 feet west of Schooley Mountain Road-Sand Shore Road and Woodsedge Avenue-Sand Shore Road (approximate mileposts 24.48 to 27.10); thence

(C) Zone 3: 45 miles per hour between Woodsedge Avenue-Sand Shore Road and Budd Lake Road-Lake Netcong Road (approximate mileposts 27.10 to 28.30); thence

(D) Zone 4: 50 miles per hour between Budd Lake Road-Lake Netcong Road and the Mount Olive Township-Netcong Borough corporate line, except for a 35 mile per hour speed limit in the Budd Lake Elementary School zone, during recess or while children are going to or leaving school during opening or closing hours (approximate mileposts 28.30 to 29.40); thence

(3) Netcong Borough:

(A) Zone 1: 50 miles per hour between the Mount Olive Township-Netcong Borough corporate line and 300 feet west of Flanders Road (approximate mileposts 29.40 to 29.60); thence

(B) Zone 2: 40 miles per hour between 300 feet west of Flanders Road and the Netcong Borough-Roxbury Township corporate line (approximate mileposts 29.60 to 30.45); thence

(4) Roxbury Township:

(A) Zone 1: 50 miles per hour between the Netcong Borough-Roxbury Township corporate line and the Route 10-Route U.S. 46 traffic circle (approximate mileposts 30.45 to 33.30); thence

(B) Zone 2: 45 miles per hour between the Route 10-Route U.S. 46 traffic circle and the Black River Bridge (approximate mileposts 33.30 to 34.24); thence

(C) Zone 3: 40 miles per hour between the Black River Bridge and Dell Avenue (approximate mileposts 34.24 to 35.09); thence

(D) Zone 4: 45 miles per hour between Dell Avenue and the Roxbury Township-Mine Hill Township corporate line (approximate mileposts 35.09 to 35.35); thence

(5) Mine Hill Township:

(A) Zone 1: 45 miles per hour between the Roxbury Township-Mine Hill Township corporate line and William Street (approximate mileposts 35.35 to 36.00); thence

(B) Zone 2: 40 miles per hour between William Street and 200 feet east of Randolph Avenue, except for a 25 mile per hour speed limit when passing through the Route U.S. 46 school zone during recess or while children are going to or leaving school during opening or closing hours (approximate mileposts 36.00 to 36.55); thence

(C) Zone 3: 45 miles per hour between 200 feet east of Randolph Avenue and the Mine Hill Township-Wharton Borough corporate line (approximate mileposts 36.55 to 37.23); thence

(6) Wharton Borough:

(A) Zone 1: 45 miles per hour between the Mine Hill Township-Wharton Borough corporate line and the Wharton Borough-Dover Town corporate line (approximate mileposts 37.23 to 37.33); thence

(7) Dover Town:

(A) Zone 1: 40 miles per hour between the Wharton Borough-Dover Town corporate line and the bridge over the Central Railroad of New Jersey (approximate mileposts 37.33 to 38.18); thence

(B) Zone 2: 35 miles per hour between the bridge over the Central Railroad of New Jersey and Perry Street, except for a 25 mile per hour speed limit when passing through the East Dover Elementary School zone (Belmont Avenue to Trenton Avenue) while "25 MPH When Flashing" signs are operating during recess or while children are going to or leaving school during opening or closing hours (approximate mileposts 38.18 to 39.14); thence

(C) Zone 3: 40 miles per hour between Perry Street and the Dover Town-Rockaway Township corporate line (approximate mileposts 39.14 to 39.50); thence

(8) Rockaway Township:

(A) Zone 1: 40 miles per hour between the Dover Town-Rockaway Township corporate line and the Rockaway Township-Rockaway Borough corporate line (approximate mileposts 39.50 to 39.94); thence

(9) Rockaway Borough:

(A) Zone 1: 40 miles per hour between the Rockaway Township-Rockaway Borough corporate line and the Rockaway Borough-Denville Township corporate line (approximate mileposts 39.94 to 41.95); thence

(10) Denville Township:

(A) Zone 1: 40 miles per hour between the Rockaway Borough-Denville Township corporate line and 500 feet east of Route 53, except for a 25 mile per hour speed limit when passing through the Saint Mary School zone, during recess when the presence of

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children is clearly visible from the roadway and when children are going to or leaving school during opening or closing hours (approximate mileposts 41.95 to 43.15); thence

(B) Zone 2: 50 miles per hour between 500 feet east of Route 53 and the Denville Township line-Mountain Lakes Borough corporate line (approximate mileposts 43.15 to 43.82); thence

(11) Mountain Lakes Borough:

(A) Zone 1: 50 miles per hour between the Denville Township-Mountain Lakes Borough corporate line and the Mountain Lakes Borough-Parsippany-Troy Hills Township corporate line (approximate mileposts 43.82 to 44.70); thence

(12) Parsippany-Troy Hills Township:

(A) Zone 1: 50 miles per hour between the Mountain Lakes Borough-Parsippany-Troy Hills Township-Montville Township corporate line (approximate mileposts 44.70 to 50.35); thence

(13) Montville Township:

(A) Zone 1: 50 miles per hour between the Parsippany-Troy Hills Township-Montville Township corporate line and the Montville Township-Fairfield Township corporate line (approximate mileposts 50.35 to 52.12); thence

iii. Essex County:

(1) Fairfield Township:

(A) Zone 1: 50 miles per hour between the Montville Township-Fairfield Township corporate line and the Fairfield Township-Wayne Township corporate line (approximate mileposts 52.12 to 55.43); thence

iv. Passaic County:

(1) Wayne Township:

(A) Zone 1: 50 miles per hour between the Fairfield Township-Wayne Township corporate line and the Wayne Township-Totowa Borough corporate line (approximate mileposts 55.43 to 56.80); thence

(2) Totowa Borough:

(A) Zone 1: 50 miles per hour between the Wayne Township-Totowa Borough corporate line and the Totowa Borough-West Paterson Borough-Little Falls Township corporate line (approximate mileposts 56.80 to 57.93); thence

(3) West Paterson Borough-Little Falls Township:

(A) Zone 1: 50 miles per hour between the Totowa Borough-West Paterson Borough-Little Falls Township corporate line and the West Paterson Borough-Little Falls Township-Clifton City corporate line (approximate mileposts 57.93 to 59.97); thence

(4) Clifton City-Paterson City:

(A) Zone 1: 50 miles per hour between the West Paterson Borough-Little Falls Township-Clifton City corporate line and the Conrail underpass (approximate mileposts 59.97 to 61.60); thence

(B) Zone 2: 35 miles per hour between the Conrail underpass and 5th Avenue (approximate mileposts 61.60 to 62.20); thence

(C) Zone 3: 50 miles per hour between 5th Avenue and the Clifton City-Paterson City-Elmwood Park corporate line (approximate mileposts 62.20 to 63.95); thence

v. Bergen County:

(1) Elmwood Park Borough:

(A) Zone 1: 50 miles per hour between the City of Clifton-Paterson City-Elmwood Park Borough corporate line and the Elmwood Park Borough-Garfield City corporate line (approximate mileposts 63.95 to 65.12); thence

(2) Garfield City:

(A) Zone 1: 50 miles per hour between the Elmwood Park Borough-Garfield City corporate line and the Garfield City-Saddlebrook Township corporate line (approximate mileposts 65.12 to 65.28); thence

(3) Saddlebrook Township:

(A) Zone 1: 50 miles per hour between the Garfield City-Saddlebrook Township corporate line and the Saddlebrook Township-Lodi Borough corporate line (approximate mileposts 65.28 to 66.05); thence

(4) Lodi Borough:

(A) Zone 1: 50 miles per hour between the Saddlebrook Township-Lodi Borough corporate line and the Lodi Borough-Hasbrouck Heights corporate line (approximate mileposts 66.05 to 67.50); thence

(5) Hasbrouck Heights Borough:

(A) Zone 1: 50 miles per hour between the Lodi Borough-Hasbrouck Heights corporate line and the Hasbrouck Heights Borough-Teterboro Borough corporate line (approximate mileposts 67.50 to 68.20); thence

(6) Teterboro Borough:

(A) Zone 1: 50 miles per hour between the Hasbrouck Heights Borough-Teterboro Borough corporate line and Industrial Avenue-Hollister Street (approximate mileposts 68.20 to 68.49); thence

(B) Zone 2: 45 miles per hour between Industrial Avenue-Hollister Street (approximate mileposts 68.49 to 69.00); thence

(7) South Hackensack Township-Little Ferry Borough:

(A) Zone 1: 45 miles per hour between the Teterboro Borough-South Hackensack Township-Little Ferry Borough corporate line and 500 feet east of Phillips Avenue (approximate mileposts 69.00 to 69.35); thence

(B) Zone 2: 40 miles per hour between 500 feet east of Phillips Avenue to the easterly South Hackensack Township-Little Ferry Borough corporate line (approximate mileposts 69.35 to 69.40); thence

(8) Little Ferry Borough:

(A) Zone 1: 40 miles per hour between the South Hackensack Township-Little Ferry Borough-Ridgefield Park Village corporate line (approximate mileposts 69.40 to 70.29); thence

(9) Ridgefield Park Village:

(A) Zone 1: 40 miles per hour between the Little Ferry Borough-Ridgefield Park Village corporate line and Teaneck Road (approximate mileposts 70.29 to 70.70); thence

(B) Zone 2: 50 miles per hour between Teaneck Road and the Ridgefield Park Village-Ridgefield Borough corporate line (approximate mileposts 70.70 to 71.37); thence

(10) Ridgefield Borough:

(A) Zone 1: 50 miles per hour between the Ridgefield Park Village-Ridgefield Borough corporate line and the Ridgefield Borough-Palisades Park Borough corporate line (approximate mileposts 71.37 to 71.64); thence

(11) Palisades Park Borough:

(A) Zone 1: 50 miles per hour between the Ridgefield Borough-Palisades Park Borough corporate line and the interchange of Route U.S. 1, 9 and 46 (approximate mileposts 71.64 to 72.15) (see Route U.S. 1 for duplicate mileage); thence

(B) Zone 2: 50 miles per hour between the interchange of Route U.S. 1, 9 and 46 and the Palisades Park Borough-Fort Lee Borough corporate line (approximate mileposts 72.15 (Route U.S. 46) and 63.86 (Route U.S. 1)); thence

(12) Fort Lee Borough:

(A) Zone 1: 50 miles per hour between the Palisades Park Borough-Fort Lee Borough corporate line and Route 63 (approximate mileposts 63.86 to 63.97); thence

(B) Zone 2: 45 miles per hour between Route 63 and the George Washington Bridge (Port Authority of New York and New Jersey) (approximate mileposts 63.97 to 64.90).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits
Route N.J. 165
Lambertville City, Hunterdon County
Proposed New Rule: N.J.A.C. 16:28-1.53

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.

Proposal Number: PRN 1994-490.

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Submit comments by October 6, 1994 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes a new rule at N.J.A.C. 16:28-1.53 to establish certain "speed limit" zones along Route N.J. 165 in the City of Lambertville, Hunterdon County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon request of the local government of the City of Lambertville in a Resolution adopted on February 28, 1994, citing numerous cross streets and a buildup of the area into a more residential zone, with little or no off-street parking, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation concluded that adopting certain "speed limit" zones along Route N.J. 165 were warranted.

Appropriate signs shall be erected in areas where the speed limit zones have been established.

Social Impact

The proposed new rule will establish a 35 miles per hour "speed limit" zone along Route N.J. 165 in the City of Lambertville, Hunterdon County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed new rule does not place any reporting, 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. The proposed new rule primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:28-1.53 [(Reserved)] **Route 165**

(a) The rate of speed designated for the certain parts of State highway Route 165 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In the City of Lambertville, Hunterdon County:

(1) Zone 1: 35 mph between Mount Hope Street and Route 179 (Bridge Street) (approximate mileposts 0.00 to 0.26).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route N.J. 94

Knowlton Township, Blairstown Township and Frelinghuysen Township in Warren County and Fredon Township, Town of Newton, Hampton Township, Lafayette Township, Sparta Township, Hardyston Township, Hamburg Borough and Vernon Township in Sussex County

Reproposed Amendment: N.J.A.C. 16:28-1.79

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Proposal Number: PRN 1994-478.

Submit comments by October 6, 1994 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On August 1, 1994, the New Jersey Department of Transportation published in the New Jersey Register at 26 N.J.R. 3133(a) proposed amendments to N.J.A.C. 16:28-1.79 that would establish revised speed limit zones along Route N.J. 94 in Knowlton Township, Blairstown Township and Frelinghuysen Township in Warren County, and Fredon Township, Town of Newton, Hampton Township, Lafayette Township, Sparta Township, Hardyston Township, Hamburg Borough and Vernon Townshp in Sussex County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace.

In commenting on the proposal, the Township of Knowlton in Warren County, and the Township of Fredon in Sussex County, requested that the Department lower the speed limit at certain locations in the respective Townships due to a build-up of the areas since the last speed zone investigation was done by the Department. Consequently, it was recommended that the suggested speed be lowered to 45 miles per hour in the areas requested by each of the Townships.

Based on the comments from the Townships of Knowlton and Fredon and the resulting investigation conducted by the Department's Bureau of Traffic Engineering and Safety Programs, it was concluded that the Department repropose the amendments affecting two provisions of the original proposal which are listed as follows.

At N.J.A.C. 16:28-1.79(a)1i(2) in Knowlton Township, Warren County, and at N.J.A.C. 16:28-1.79(a)2i(1) in Fredon Township, Sussex County, the speed limits have been reproposed to include revised coordinates of the mileposts designation, and to include an additional speed limit zone in each of the areas. The balance of the original proposal remains unchanged and is being reproposed at this time. Appropriate signs shall be erected in areas where the speed limit zones have been changed.

This reproposal supersedes the earlier proposal that was published at 26 N.J.R. 3313(a). Accordingly, any comments received in response to the prior proposal will not be considered in connection with the reproposal unless those comments are timely and submitted in writing during the current comment period. Of course, the original commenters, and any other interested persons are welcome to submit additional written comments, provided that they do so timely in accordance with this reproposal.

Social Impact

The proposed amendments will establish revised "speed limit" zones along Route N.J. 94 for the efficient flow of traffic, the enhancement

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of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of the revised "speed limit" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendments do not place any reporting, 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. The proposed amendments primarily affect the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:28-1.79 Route 94

(a) The rate of speed designated for the certain part of State highway Route 94 described in this subsection shall be established and adopted as the maximum legal rate of speed:

[1. For both directions of traffic:

i. 35 miles per hour from the westerly end of Route 94 at Columbia to a point 1,600 feet west of the center line of Delaware-Warrington Road, Knowlton Township; thence

ii. 50 miles per hour to a point 600 feet east of the center line of Hainesburgh-Columbia Road; thence

iii. 35 miles per hour to a point 1,200 feet east of the center of Yards Creek Bridge, Hainesburgh; thence

iv. 50 miles per hour to a point 200 feet west of the center line of Main Street, Blairstown; thence

v. 40 miles per hour to the center of the New York, Susquehanna and Western Railroad overpass, at Blairstown; thence

vi. 50 miles per hour to a point 400 west of the center of the bridge of branch of Paulinskill, Marksboro; thence

vii. 35 miles per hour to a point 600 feet east of the center line of the road to Squires Corner, Marksboro; thence

viii. 45 miles per hour to a point 1,400 feet west of the Warren County-Sussex County line; thence

ix. 50 miles per hour to a point 1,800 feet west of the center line of the entrance to Newton Memorial Hospital; thence

x. 40 miles per hour to the intersection of Summit Avenue, Town of Newton, Sussex County; thence

xi. 30 miles per hour to the Intersection of Spring Street:

(1) 30 miles per hour between Summit Avenue and Liberty Street; thence

(2) 25 miles per hour betwen Liberty Street and High Street-Park Place (Route US 206 intervenes here).

xii. 45 miles per hour from the intersection of Route US 206 and Route 94 (Morris Farms-Lafayette Road) to the northerly intersection of Route 15 (Route 15 regulation intervenes here);

xiii. In Sussex County:

(1) Lafayette Township: 45 miles per hour between the northernmost intersection of Route 15 and the Sparta Township corporate Line (Mileposts 28.17 to 28.82).

(2) Sparta Township:

(A) 45 miles per hour between the Lafayette Township corporate line and 1100 feet south of Old Prospect School Road (Mileposts 28.82 to 31.06).

(B) 40 miles per hour between 110 feet south of Old Prospect School Road and the Hardyston Township corporate line (Mileposts 31.06 to 31.36).

(C) 35 miles per hour School speed Zone in zone 12 within the Sussex County Vocational School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours.

(3) Hardyston Township:

(A) 40 miles per hour between the Sparta Township corporate line and 450 feet north of the Sparta Township corporate line (Mileposts 31.36 to 31.4).

(B) 45 miles per hour between 450 feet north of the Sparta Township corporate line and North Church Road (Co. Rd. 631), (mileposts 31.4 to 33.07).

(C) 45 miles per hour between the Hamburg Borough-Hardyston Township line and 2,600 feet south of Old Coach Road (mileposts 35.92 to 36.78); thence

(D) 35 miles per hour between 2,600 feet south of Old Coach Road and the Hardyston Township-Vernon Township line (mileposts 36.78 to 37.11); thence

(4) Hamburg Borough:

(A) 35 miles per hour between the southernmost Hardyston Township-Hamburg Borough Corporate line and the northernmost Hamburg Borough-Hardyston Township Corporate line (mileposts 35.23 to 36.10); thence

(B) 50 miles per hour to a point 200 feet west of the N.Y.S.&W. Railroad overpass, Hamburg; thence

(C) 35 miles per hour to the intersection of Mountainview Street; thence

(5) Vernon Township:

(A) 35 miles per hour between the Hardyston Township-Vernon Township line and 1,000 feet north of Rudetown Road (County Road 517) (mileposts 37.11 to 38.57); thence

(B) 40 miles per hour between 1,000 feet north of Rudetown Road (County Road 517) and 400 feet south of Sand Hill Road (mileposts 38.57 to 39.87); thence

(C) 35 miles per hour between 400 feet south of Sand Hill Road and 600 feet north of Vernon Crossing Road (County Road 644) (mileposts 39.87 to 41.75); thence

(D) 45 miles per hour between 600 feet north of Vernon Crossing Road (County Road 644) and the New York State line (mileposts 41.75 to 45.71); thence

(E) 45 miles per hour to the New York State line;

(F) The legal speed limits through school zones shall be subject to the provisions of Title 39:4-98(a) of the Revised Statutes.

(6) Fredon Township:

(A) 35 miles per hour school speed zone in zone 9 within the Fredon Township school zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours.

2. For Counter Clockwise Directions of traffic:

i. 25 miles per hour between High Street—Park Place and Park Place—High Street.

3. In Frelinghuysen Township, Warren County:

i. 35 miles per hour School speed zone in Zone 6, within Frelinghuysen Township School Zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours.]

1. For both directions of traffic in Warren County:

i. Knowlton Township:

(1) Zone 1: 35 mph between the Commonwealth of Pennsylvania-State of New Jersey jurisdictional line and 1,400 feet south of Stark Road (approximate mileposts 0.19 to 0.72); thence

(2) Zone 2: 50 mph between 1,400 feet south of Stark Road and 1,300 feet north of Brugler Road (approximate mileposts 0.72 to 1.95); thence

(3) Zone 3: 45 mph between 1,300 feet north of Brugler Road and 600 feet north of Hainesburg River Road (approximate mileposts 1.95 to 2.49); thence

(4) Zone 3: 35 mph between 600 feet north of Hainesberg River Road and 2,300 feet north of Mount Pleasant Road (approximate mileposts 2.49 to 2.87); thence

(5) Zone 4: 50 mph between 2,300 feet north of Mount Pleasant Road and the Township of Blairstown-Township of Knowlton corporate line (approximate mileposts 2.87 to 3.92); thence

ii. Blairstown Township:

(1) Zone 1: 50 mph between the Township of Knowlton-Township of Blairstown corporate line and 200 feet south of Main Street (approximate mileposts 3.92 to 8.78); thence

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(2) Zone 2: 40 mph between 200 feet south of Main Street and 100 feet north of Hope Road (County Road 521) (approximate mileposts 8.78 to 9.42); thence

(3) Zone 3: 45 mph between 100 feet north of Hope Road (County Road 521) and the Township of Blairstown-Township of Frelinghuysen corporate line (approximate mileposts 9.42 to 10.26); thence

iii. Frelinghuysen Township:

(1) Zone 1: 45 mph between the Township of Frelinghuysen-Township of Blairstown corporate line and Silver Lake Road (approximate mileposts 10.26 to 11.89); thence

(2) Zone 2: 35 mph between Silver Lake Road and 600 feet north of Spring Valley Road (approximate mileposts 11.89 to 12.20); thence

(3) Zone 3: 45 mph between 600 feet north of Spring Valley Road and the Township of Frelinghuysen-Township of Fredon corporate line except for 35 mph when passing through the Frelinghuysen Township School zone, during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school during opening or closing hours (approximate mileposts 12.20 to 15.04); thence

2. For both directions of traffic in Sussex County:

i. Fredon Township:

(1) Zone 1: 50 mph between the Township of Fredon-Township of Frelinghuysen corporate line and Fredon-Stillwater Road (Co. Rd. 610), except for 35 mph when passing through the Fredon Elementary School zone, during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate mileposts 15.04 to 18.71); thence

(2) Zone 2: 45 mph between Fredon-Stillwater Road (Co. Rd. 610) and the Township of Fredon-Town of Newton corporate line (approximate mileposts 18.71 to 21.39); thence

ii. Town of Newton:

(1) Zone 1: 40 mph between the Township of Fredon-Town of Newton corporate line and Summit Avenue (approximate mileposts 21.39 to 21.95); thence

(2) Zone 2: 30 mph between Summit Avenue and Liberty Street (approximate mileposts 21.95 to 22.22); thence

(3) Zone 3: 25 mph between Liberty Street and High Street-Park Place (approximate mileposts 22.22 to 22.42) (Route U.S. 206 intervenes here).

3. For counterclockwise directions of traffic in Sussex County:

i. In the Town of Newton:

(1) 25 mph between High Street-Park Place and Park Place-High Street (approximate mileposts 22.42 to 22.61); thence (N.J. Route 94 mileposts 22.61 to 24.91 is under the jurisdiction of Route U.S. 206).

4. For both directions of traffic in Sussex County:

i. Hampton Township:

(1) 45 mph between Route U.S. 206 and the Township of Hampton-Township of Lafayette corporate line (approximate mileposts 24.91 to 25.64); thence

ii. Lafayette Township:

(1) 45 mph between the Township of Hampton-Township of Lafayette corporate line and the Township of Lafayette-Township of Sparta corporate line (approximate mileposts 25.64 to 28.61); thence

iii. Sparta Township:

(1) Zone 1: 45 mph between the Township of Lafayette-Township of Sparta corporate line and 1,130 feet south of Old Prospect School Road, except for 35 mph when passing through the Sussex County Vocational School zone, during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate mileposts 28.61 to 30.83); thence

(2) Zone 2: 40 mph between 1,130 feet south of Old Prospect School Road and the Township of Sparta-Township of Hardyston corporate line (approximate mileposts 30.83 to 31.11); thence

iv. Hardyston Township:

(1) Zone 1: 40 mph between the Township of Sparta-Township of Hardyston corporate line and 700 feet north of Old Prospect School Road (approximate mileposts 31.11 to 31.20); thence

(2) Zone 2: 45 mph between 700 feet north of Old Prospect School Road and the southernmost Township of Hardyston-Borough of Hamburg corporate line (approximate mileposts 31.20 to 35.13); thence

v. Hamburg Borough:

(1) 35 mph between the southernmost Hamburg Borough-Hardyston Township corporate line and the northernmost Hamburg Borough-Hardyston Township corporate line (approximate mileposts 35.13 to 35.97); thence

vi. Hardyston Township continued:

(3) Zone 3: 45 mph between the northernmost Borough of Hamburg-Township of Hardyston corporate line and 2,600 feet south of Old Coach Road (approximate mileposts 35.97 to 36.83); thence

(4) Zone 4: 35 mph between 2,600 feet south of Old Coach Road and the Townshp of Vernon-Township of Hardyston corporate line (approximate mileposts 36.83 to 37.16); thence

v. Vernon Township:

(1) Zone 1: 35 mph between Hardyston Township-Vernon Township corporate line and 1,000 feet north of Rudetown Road (County Road 517) (approximate mileposts 37.16 to 38.62); thence

(2) Zone 2: 40 mph between 1,000 feet north of Rudetown Road (County Road 517) and 400 feet south of Sandhill Road (approximate mileposts 38.62 to 39.93); thence

(3) Zone 3: 35 mph between 400 feet south of Sandhill Road and 600 feet north of Vernon Crossing Road (County Road 644) (approximate mileposts 39.93 to 41.85); thence

(4) Zone 4: 45 mph between 600 feet north of Vernon Crossing Road (County Road 644) and the New York State-State of New Jersey jurisdictional line (approximate mileposts 41.85 to 45.76).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping
Route N.J. 28
City of Elizabeth, Union County
Proposed Amendment: N.J.A.C. 16:28A-1.19

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138, 39:4-138.1, 39:4-198 and 39:4-199.

Proposal Number: PRN 1994-475.

Submit comments by October 6, 1994 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering
and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28A-1.19 to establish a "handicapped parking space" on Route N.J. 28 in the City of Elizabeth, Union County. This amendment is being proposed at the request of the local government of the City of Elizabeth in a Resolution adopted on June 16, 1994, requesting a handicapped parking space in front of 644 Westfield Avenue (Route N.J. 28), in the City of Elizabeth, Union County. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs

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concluded that the establishment of a handicapped parking space in front of 644 Westfield Avenue, Route N.J. 28, was warranted. Signs are required to notify motorist of the restrictions proposed herein.

Social Impact

The proposed amendment will establish a "handicapped parking space" in front of 644 Westfield Avenue, (Route N.J. 28), in the City of Elizabeth, Union County. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The local government will bear the costs for the installation of appropriate parking restriction zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, 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. The proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:28A-1.19 Route 28

(a)-(c) (No change.)

(d) The certain parts of State highway Route 28 described in this subsection shall be designated and established as Restricted Parking Space, for the use of persons who have been issued special Vehicle Identification Cards by the Division of Motor Vehicles. No other person shall be permitted to park in these areas. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established handicapped parking spaces:

[i.]**1.** Restricted parking in the City of Elizabeth, Union County:

Recodify existing (1)-(2) as **i.-ii.** (No change in text.)

iii. Handicapped parking at 644 Westfield Avenue beginning at a point 543 feet west of the westerly curb line of Elmora Avenue and extending 22 feet westerly therefrom.

Recodify existing ii. as **2.** (No change in text.)

Recodify existing (1)-(3) as **i.-iii.** (No change in text.)

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

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS AND BENEFITS

Teachers' Pension and Annuity Fund
School Year Members

Proposed Amendments: N.J.A.C. 17:3-4.3

Authorized By: Board of Trustees, Teachers' Pension and Annuity Fund, Regina Trauner, Secretary.

Authority: N.J.S.A. 18A:66-56 et seq.

Proposal Number: PRN 1994-473.

Submit comments by October 6, 1994 to:
Peter J. Gorman, Esq.
Executive Assistant
Division of Pensions and Benefits
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments clarify the intent of the recent amendments to N.J.A.C. 17:3-4.3 concerning the same subject matter. Those amendments governed a situation in which a school employee whose contract states that his or her full academic year is less than 12 months terminates such employment and accepts a full 12-month position on or before what would have been the expiration date of the previous contract. In such cases, the person would receive credit within the retirement system for the full months between the termination of actual employment under the former contract and the start of the new contract, if the person returns to the same employer. The actual intent was to cover situations where the member is either returning to the same employer or going to another employer also participating in the Teachers' Pension and Annuity Fund. The purpose of these amendments are to provide comparable treatment to persons going to a different employer, if that employer also participates in the Teachers' Pension and Annuity Fund.

Social Impact

The proposed amendment will affect all present and future school employees whose regular work year is less than 12 months, who terminate such a position and accept a full 12 month position with the same employer or another employer participating in the Teachers' Pension and Annuity Fund before the termination of that former contract. These amendments would eliminate the possible gap in service credit that otherwise would have applied to the member if he or she did not convert to a full 12 month contract with a different employer.

Economic Impact

Since the amendments are merely a restatement of the current rule in effect and is an attempt to provide clarification regarding the service credit, there are no adverse economic consequences to either the member or the employer who may be affected by the amendment.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements upon small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since the rules of the Division of Pensions and Benefits only impact upon public employers and/or public employees, the amendments will not have any effect upon small businesses or private industry in general.

Full text of the proposal follows (additions indicated in boldface **thus**):

17:3-4.3 School year members

(a) (No change.)

(b) If a member terminates a position that requires less than 12 months to constitute one full year of service at the end of the normal academic school year and accepts a 12 month position with the same employer **or another employer that participates in the Teachers' Pension and Annuity Fund** and begins employment on or before the date that was established by the previous year's contract position. Such member will receive service credit within the Teachers' Pension and Annuity Fund for the period between the end of the previous contract and the employment date of the new 12 month position.

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Drop Boxes, Transportation to and from Gaming Tables; Slot Cash Storage Boxes, Transportation to and from Bill Changers; Storage in Count Room

Proposed Amendments: N.J.A.C. 19:45-1.17 and 1.42

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(j), 99 and 100.

Proposal Number: PRN 1994-474.

Submit written comments by October 6, 1994 to:
Seth H. Briliant, Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, N.J. 08401

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The agency proposal follows:

Summary

N.J.A.C. 19:45-1.17(d) presently provides that all empty drop boxes and slot cash storage boxes must be stored in the count room; only emergency drop boxes and emergency slot cash storage boxes may be stored in a secure area outside the count room.

This proposal would eliminate that distinction, and would permit any empty drop boxes and slot cash storage boxes to be stored either in the count room or in another secure area outside the count room approved by the Commission, as long as the area is approved by the Commission and the empty boxes are stored in an enclosed double-locked cabinet or trolley.

Social Impact

These amendments would affect only certain back-of-the-house operations, and are not expected to have any particular social impact.

Economic Impact

By permitting empty drop boxes and slot cash storage boxes to be stored in secure areas other than the count rooms, additional space and additional capacity could be created in the count rooms, which may be needed as more bill changers are added to existing slot machines.

Regulatory Flexibility Statement

The proposed amendments will only affect casino licensees, none of which is a small business as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:45-1.17 Drop boxes, transportation to and from gaming tables; slot cash storage boxes, transportation to and from bill changers; storage [in count room or slot machine base]

(a)-(c) (No change.)

(d) [All] **Except as provided in (e) below, all** drop boxes[,] not attached to a gaming table and all slot cash storage boxes not contained in a bill changer, [except] **including** emergency drop boxes and emergency slot cash storage boxes which are not actively in use, shall be stored in the count room **or other secure area outside the count room approved by the Commission,** in an enclosed storage cabinet or trolley and secured in such cabinet or trolley by a separately keyed, double locking system. The key to one lock shall be maintained and controlled by the security department and the key to the second lock shall be maintained and controlled by a Commission inspector. [Emergency drop boxes and emergency slot cash storage boxes, when not in use, may be stored in an enclosed storage cabinet or trolley and secured in such cabinet or trolley by a separately keyed, double locking system in a secured area outside the count room as approved by the Commission. The key to one lock shall be maintained and controlled by the security department and the key to the second lock shall be maintained and controlled by a Commission inspector.]

(e) Drop boxes, when not in use during a shift, may be stored on the gaming tables provided that there is adequate security as approved by the Commission. If adequate security is not provided during this time, the drop boxes shall be stored [in the count room in an enclosed storage cabinet or trolley except that emergency drop boxes and emergency slot cash storage boxes not actively in use may be stored in a secured area outside of the count room as approved by the Commission,] as required in (d) above.

19:45-1.42 Removal of slot drop buckets, slot drop boxes and slot cash storage boxes; meter readings

(a) For each slot machine and attached bill changer on the gaming floor, the slot drop bucket, slot drop box and slot cash storage box shall be removed at least once a week on specific days and at times designated by the casino licensee on a schedule which shall be filed with the Commission and the Division. No slot drop bucket, slot drop box or slot cash storage box shall be emptied or removed from its compartment at other than the times specified on such schedule except with the express approval of the Commission. Prior to emptying or removing any slot drop bucket, slot drop box or slot cash storage box, a casino licensee shall notify the Commission and the surveillance department of the transportation route that will be utilized.

1. All slot drop boxes which are not attached to a slot machine or temporarily stored in the base of a slot machine pursuant to (c)2ii below, [except] **including** emergency slot drop boxes which are not actively in use, shall be stored in the count room **or other secure area outside the count room approved by the Commission,** in an enclosed storage cabinet or trolley and secured in such cabinet or trolley by a separately keyed, double locking system. The key to one lock shall be maintained and controlled by the security department and the key to the second lock shall be maintained and controlled by the Commission.

[2. Emergency slot drop boxes, when not in use, shall be stored in a secured area approved by the Commission, in an enclosed storage cabinet or trolley and secured in such cabinet or trolley by a separately keyed, double locking system. The key to one lock shall be maintained and controlled by the security department and the key to the second lock shall be maintained and controlled by the Commission.]

(b)-(q) (No change.)

(a)

DELAWARE RIVER BASIN COMMISSION

Notice of Amendments to Comprehensive Plan and Basin Regulations—Water Supply Charges

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold a **public hearing** to receive comments on proposed amendments to its Comprehensive Plan and Basin Regulations—Water Supply Charges concerning the transfer of Certificates of Entitlement. Holders of Certificates of Entitlement are exempted from the payment of water charges until such Certificates are transferred. The amendments would (1) define "transfer"; (2) delete two categories of exemptions from the existing general rule that terminates Certificates of Entitlement upon transfer; and (3) revise a third such category.

HEARING DATE: The public hearing will be held on Wednesday, October 26, 1994 at 3:00 P.M.

ADDRESS: The hearing will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. **Written comments** should be submitted to Susan M. Weisman, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Telephone (609) 883-9500 ext. 203. Persons wishing to testify are requested to register with the Secretary in advance.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The regulations of the Delaware River Basin Commission require, upon transfer, the termination of certificates of entitlement which permit the withdrawal of water from the basin without charge. The U.S. Court of Appeals for the Third Circuit has confirmed the Commission's power under its Compact to terminate certificates of entitlement when a transfer has occurred. The court also ruled that the Commission's interpretation of its existing regulation that limited the extent to which certain transfers were exempt from termination was not consistent with the specific wording of the regulations.

Pursuant to the court ruling, the Commission proposes to amend its Basin Regulations—Water Supply Charges, so that transfer exceptions are consistent with existing Commission policy to terminate certificates of entitlement when a transfer of ownership and/or control of a water using facility occurs.

The amendments inter alia define a transfer to include the sale of corporate stock. They also delete existing exceptions to the transfer rule for corporate merger transactions and certain transactions under the Internal Revenue Code.

The subject of the hearing will be as follows:

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Amendments to the Comprehensive Plan and Basin Regulations—Water Supply Charges.

1. Section 5.2.1D. of the Basin Regulations—Water Supply Charges is amended to read as follows:
   D. A certificate of entitlement is not transferable, except as provided in paragraphs E. and F. of this section. For the purposes of this section, "transfer" shall mean any sale or other conveyance by a holder of a certificate of entitlement involving a specific facility and shall include any transfer which results in a change of ownership and/or control of the facility or of the stock, or other indicia of ownership of a corporation which holds title to the facility.
2. Sections 5.2.1F. of the Basin Regulations—Water Supply Charges is amended to read as follows:
   F. A certificate of entitlement may be transferred in connection with a corporate reorganization within any of the following categories:
      (1) whenever property is transferred to a corporation by one or more persons solely in exchange for stock or securities of the same corporation, provided that immediately after the exchange the same person or persons are in control of the transferee corporation; that is, they own 80 percent of the voting stock and 80 percent of all other stock of the corporation; or
      (2) where such transfer is merely a result of a change of the name, identity, internal corporate structure or place of organization of a corporate holder of a certificate of entitlement and does not affect ownership and/or control.
3. These amendments shall be effective immediately.

HUMAN SERVICES

(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Outpatient Services Standards

Proposed New Rules: N.J.A.C. 10:37E

Proposed Repeals: N.J.A.C. 10:37-5.28 through 5.34

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:9A-10.

Proposal Number: PRN 1994-486.

Submit comments by October 6, 1994 to:
Raymond M. Deeney, Esq.
Administrative Practice Officer
Division of Mental Health and Hospitals
CN 727
Trenton, NJ 08625-0727

The agency proposal follows:

Summary

These proposed new rules govern the provision of outpatient services by provider agencies funded by the Division of Mental Health and Hospitals. The current rules governing the provision of these services (N.J.A.C. 10:37-5.28 through 5.34) are hereby being proposed for repeal. Outpatient services are intended to meet the needs of individuals who are not in an immediate crisis and who need support, treatment or counseling that is longer term than that provided by emergency services and less structured and shorter term than the several hours of daily or semi-daily involvement provided by partial care services. Currently, the Division provides over $19,000,000 of funding to 77 providers of outpatient services, which serve nearly 100,000 individuals throughout New Jersey.

The purpose of these proposed rules is to ensure the continued delivery of high quality, efficient and effective State funded outpatient services by providing recently revised and comprehensive program standards. The Division concluded a process to develop uniform standards for these services last year, with significant input from service providers, consumers, family members and advocates for individuals with mental illness. This proposal is the result of that initiative and the Department believes that uniform standards for these services promulgated through the rulemaking process will produce the most appropriate standards with the broadest input possible. The program itself is essentially unchanged. The rules produced with the input of providers, consumers and advocates are, the Division believes, more clearly representative of the outpatient services program and requirements.

N.J.A.C. 10:37E-1.1 explains the scope and purpose of these proposed new rules. N.J.A.C. 10:37E-1.2 provides definitions for the words and terms used in this chapter. N.J.A.C. 10:37E-2.1 sets requirements for the development and implementation of written policies and procedures by provider agencies. N.J.A.C. 10:37E-2.2 establishes priorities amongst clients to be admitted and served by the provider agencies. N.J.A.C. 10:37E-2.3 establishes requirements regarding various aspects of service delivery by provider agencies. N.J.A.C. 10:37E-2.4 establishes requirements regarding various aspects of service planning by provider agencies. N.J.A.C. 10:37E-2.5 establishes the requirements regarding the termination of clients from services by provider agencies. N.J.A.C. 10:37E-2.6 establishes the requirements regarding the staff employed by the provider agencies to provide these services. N.J.A.C. 10:37E-2.7 establishes requirements for provider agencies to monitor and evaluate the utilization of outpatient service resources.

Social Impact

These services are designed to address the mental health needs of adults with serious and persistent mental illness and are expected to positively impact those individuals by establishing standards which will continue to promote the effective delivery of appropriately prioritized quality services. Implementation of these services and standards is expected to promote greater independence and improved quality of life, as well as reduced hospitalizations, among the clients receiving the services. The opportunity for input offered the clients, advocates and providers has resulted in rules which, the Division believes, are more clear and "user-friendly."

Additionally, the standards contained in these proposed new rules assist provider agencies in attaining their goal of providing high quality and well focused services. The Division benefits from the promulgation of these standards because they provide an appropriate measure to use in determining whether service delivery meets basic minimum requirements.

Economic Impact

The funding of, and the establishment of standards for, the services which are the basis for these rules have a positive economic impact on clients with limited incomes because they are generally made available to them at no cost. The Department believes that provider agencies can comply with these rules without expenditures in addition to the funding received from the Division or other sources in relation to these services. The promulgation of these standards is not intended or expected to impact the amount of Division funding available to agencies to provide these services in the future. The Department also believes that taxpayers throughout the State ultimately benefit from the effective delivery of these services, because the services reduce the need for expensive psychiatric hospitalization. The outpatient program has not changed; the new rules provide a more clear delineation of the Division's standards.

Regulatory Flexibility Analysis

Some providers of Division-funded outpatient services may be small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed new rules require provider agencies to develop written policies and procedures generally (N.J.A.C. 10:37E-2.1), to develop written policies and procedures describing admission practices (N.J.A.C. 10:37E-2.2), to write progress notes in the client records (N.J.A.C. 10:37E-2.3), to maintain written service plans in the clinical records (N.J.A.C. 10:37E-2.4), to establish and implement policies and procedures to address the termination of services to clients (N.J.A.C. 10:37E-2.5) and to collect and analyze utilization review data (N.J.A.C. 10:37E-2.7).

The reporting, recordkeeping and other compliance requirements imposed upon such provider agencies must be uniformly applied, regardless of the size of the provider agency, to ensure that individuals with mental illness receiving these services throughout the State do so in accordance with basic minimum standards of quality. These standards are important because many consumers of these community services would be at risk of more restrictive and expensive hospitalization, unless these services are competently and effectively provided. Additionally, these agencies

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are individually funded by the Division to be able to meet these requirements, and it is not anticipated that compliance will require the employment of professional services by providers.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 10:37-5.28 through 5.34.

Full text of the proposed new rules follows:

CHAPTER 37E
OUTPATIENT SERVICE STANDARDS

SUBCHAPTER 1. GENERAL PROVISIONS

10:37E-1.1 Scope and purpose

(a) The rules in this chapter shall apply to all Division funded outpatient services (OP).

(b) The purpose of OP services is to support, enhance and encourage the emotional development and the development of clients life skills in order to maximize their individual functioning. These services are designed to preserve or improve current functioning, strengths and resources. In OP services clients and staff work together to plan and implement effective treatment.

10:37E-1.2 Definitions

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

"Affiliated psychiatric emergency service" means a psychiatric emergency service which has a written, Division approved affiliation agreement with a designated screening center to provide screening services within the area served by the designated screening center.

"Division" means the Division of Mental Health and Hospitals in the Department of Human Services.

"Medication monitoring" means medication services provided under supervision of a licensed physician, or by a certified nurse practitioner/clinical nurse specialist and his or her collaborating physician, to evaluate, prescribe or administer, and monitor the client's use of psychotropic medications including anti-parkinsonian medications.

"Outpatient services" means mental health services provided in a community setting to clients who possess a psychiatric diagnosis, including clients who are seriously and persistently mentally ill but excluding substance abuse and developmental disability unless accompanied by treatable symptoms of mental illness. Periodic therapy, counseling, and supportive services are generally provided onsite at the provider agency for relatively brief sessions (between 30 minutes and two hours). Services may be provided individually, in group, or in family sessions.

"Provider agency (PA)" means a public or private organization which has a contract with the Division to provide OP services.

"Psychoeducation services" means a mutual exchange of information and education between the professional and client or the professional and family members in order to increase the likelihood of family and community support to the client and to reduce the probability of client decompensation. Information may address etiology and symptoms characteristic of the client's mental illness, effects of medication, coping skills, daily living skills community resources and supports, and similar mental health service-related matters.

SUBCHAPTER 2. PROGRAM OPERATION

10:37E-2.1 Written policies and procedures

(a) PA shall develop and implement written policies and procedures to ensure that the provider complies with the rules in this chapter.

1. The PA shall have a written policy and procedure manual which is reviewed at least annually as evidenced by a written review date.

2. The PA shall have written policies and procedures that reflect the operational standards and practices of the PA.

10:37E-2.2 Population/admission priorities

(a) The PA shall have written policies and procedures describing its admission criteria and practices. First priority for admissions into OP services shall be given to persons with severe and persistent mental illness in accordance with target populations, as defined in N.J.A.C. 10:37-5.2.

1. The PA shall have written and implemented policies and procedures regarding admission criteria requiring that clients referred directly from emergency services by a screening or affiliated psychiatric emergency service for medication follow-up be seen within seven calendar days of referral and that clients referred from inpatient settings for medication monitoring services be seen within fourteen calendar days of referral.

2. The PA shall have written and implemented policies which establish time frames and procedures for completion of the admission process for clients needing services other than medication monitoring.

3. The PA shall have written policies and procedures which specify the information to be obtained and the records to be maintained on all applicants or referrals for admission, the procedure for accepting referrals from outside organizations, self referrals and other sources, the statistical data to be recorded at the intake process, and the procedures to be followed, including alternative services, when an applicant is found ineligible for admission.

4. The PA shall have written and implemented policies and procedures that require every client receive an initial face-to-face assessment by professional staff or by a student in a recognized training program who is supervised by a member of the professional staff assuming responsibility for the work.

5. The PA shall have written and implemented policies and procedures requiring that applicants for service fully understand the program characteristics and their rights and responsibilities, including the nature and goals of the treatment program, the hours during which services are available, the treatment costs to be borne by the client, if any, and any other information deemed pertinent by the PA. Documentation of this communication shall be maintained in the clinical record.

10:37E-2.3 Services to be provided

(a) The OP program shall provide a range of services which address the individual needs of clients and shall include, at a minimum, the following:

1. Assessment and evaluation;

2. Referral, linkage and follow-up services;

3. Individual, group, and family therapy;

4. Psychiatric evaluation, medication services and medication monitoring; and

5. Psychoeducational services.

(b) Progress notes shall be completed after each OP session and shall be entered chronologically in the client record to document service provision.

(c) Progress notes shall generally relate the treatment provided to the goals and objectives contained in the written service plan and, at a minimum, shall address the following:

1. All face-to-face and other pertinent contacts;

2. Amount of time it took to deliver the service;

3. Clinical course of treatment including rationale for service provided;

4. Significant changes in the client's condition or situation, if any; and

5. Current status and response to treatment.

(d) The PA shall develop and implement policies and procedures to ensure effective provision of medication monitoring services.

1. Methods for service coordination and communication between PAs and other service providers serving mutual clients receiving medication shall be developed and implemented consistent with confidentiality rules in N.J.A.C. 10:37-6.59 to ensure that all providers of service are aware of the medication prescribed, potential side effects, and other medication monitoring concerns.

2. The PA shall ensure that clients receive information and instructions about the medication prescribed including, at a minimum, dosage, administration, contraindications, potential adverse reactions, and any relevant health education.

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10:37E-2.4 Service planning

(a) Each client shall be provided OP services according to a written service plan contained in the clinical record.

1. Service plans shall be based upon the findings and treatment recommendations of a comprehensive mental health assessment.

2. The comprehensive mental health assessment shall be conducted by a team consisting of, at a minmimum, a physician and an OP counselor or therapist.

(b) The comprehensive mental health assessment shall identify the client's needs and strengths and shall address, at a minimum, the following information about the client:

i. Current emotional and behavioral functioning;

ii. Previous emotional, behavioral, and substance abuse problems and treatment;

iii. Medication history, including medication dosage, frequency and side effects;

iv. Previous and current physical health problems, and observation of physical appearance as it may relate to the client's mental condition;

v. Abuse, neglect, and domestic violence history;

vi. Family situation, including the constellation of the family group; the current living situation; and social, ethnic, cultural, emotional, and health factors;

vii. Educational and work history;

viii. Identification of the community resources currently utilized by the client;

ix. Evaluation of the developmental age factors of the client in programs serving minors;

x. Psychological assessments, when clinically indicated; and

xi. Evaluations of any language, self-care, and other areas of functioning which relate to the client's mental condition.

3. The professional staff shall fully consider the client's preferences when formulating the service plan and shall ensure that the client participates in the development of his or her treatment plan. Level of participation shall be documented in the client record. Exceptions shall be documented, with specific reasons, as to the client's non-participation. If a client does not participate, the specific reasons for the non-participation shall be documented.

4. The service plan shall be under the direction of a physician.

5. The service plan shall contain goals, timeframes, measurable objectives that relate to the goals and specific criteria for termination or reduction of services. Service plans for clients receiving solely medication monitoring services need only address the reason for medication monitoring. For all clients receiving medication, the service plan shall identify the medication, dosage, and frequency of administration and indicate frequency of clinic appointments.

6. The service plan shall specify the following:

i. Anticipated staff interventions necessary to meet the client's needs;

ii. Frequency of service provided; and

iii. Any referrals for needed services that are not provided directly by the agency.

7. The service plan shall document any involvement of the family and significant others, and be in accordance with the legal requirements for client consent to family involvement.

8. The service plan shall be completed by the fifth session or within 60 days of the first face-to-face visit, whichever occurs first, except when documented that clinical circumstances dictate that a different time frame is in the client's best interests.

9. The service plan shall be reviewed at significant decision points in each client's course of treatment and the review shall be documented in either the progress notes or treatment plan revision. Significant decision points shall include, but need not be limited to, the transfer or discharge of a client, changes in medication, and any significant change in the client's condition or situation, including, at a minimum, adverse reactions to medications.

10. The clinician and client shall review the service plan together at least every three months for the first year of treatment and at least every six months thereafter. The clinician's supervisor shall review the plan after each review by the client and clinician. For those clients who require only medication monitoring services, the service plan shall be updated by the physician and clinician, if appropriate, every six months.

10:37E-2.5 Termination of services

(a) The OP program shall establish and implement policies and procedures to address the termination of services to clients.

1. When it is determined that termination of services to a client is clinically appropriate, professional staff shall assess further client needs and make appropriate referrals and linkages.

2. Individuals shall not be terminated due to non-attendance without prior specific efforts to engage the client which shall be documented in the client's clinical record.

3. A termination summary shall be documented in the client record within 30 days following termination. This shall include, at a minimum, the following:

i. Primary presenting problem;

ii. Significant findings;

iii. Treatment provided and response to treatment;

iv. Clinical condition at termination;

v. The recommendations and arrangements for further treatment, including prescribed medications, dosage and possible side effects and any referrals made; and

vi. The individual's final multi-axial diagnoses, as derived from the most recent edition of the Diagnostic and Statistical Manual, published by the American Psychological Association, 750 First St. NE, Washington, DC, 20002-4242, tel. 202-336-5500.

10:37E-2.6 Staffing requirements

(a) The PA shall employ staff who are licensed, when required, appropriately credentialed and sufficiently trained to provide OP services.

1. No counseling or therapy services requiring professional training, licensure or certification shall be provided by any staff member not appropriately trained, licensed or certified to provide such services.

(b) The OP Program Director shall manage OP operations and provide OP staff clinical supervision. This individual shall possess, at a minimum, an earned Masters degree in a human services field, and five years experience in mental health services with two years supervisory experience.

10:37E-2.7 Utilization review

(a) In addition to meeting the quality assurance requirements as promulgated in N.J.A.C. 10:37-9, the PA shall also monitor and evaluate utilization of OP resources.

(b) At a minimum, the following data shall be routinely collected and analyzed:

1. Wait for service data:

i. The length of time from referral to intake interview from a designated screening center or a psychiatric emergency service with a written affiliation agreement with a designated screening center for medication monitoring; and from inpatient settings for medication monitoring. From all other sources the length of time from intake interview to initiation of ongoing therapy or medication monitoring;

2. Caseload size per therapist; and

3. Percentage of direct service time and indirect service time spent by each therapist each month.

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Notice of Administrative Correction to Proposal and Extension of Comment Period

Family Support Service System

Proposed New Rules: N.J.A.C. 10:46A

Take notice that the Division of Developmental Disabilities has discovered an error in the Regulatory Flexibility Statement which was published in the August 15, 1994 issue of the New Jersey Register at 26 N.J.R. 3341(b) as part of the proposed new rules for family support

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services, N.J.A.C. 10:46A. The Regulatory Flexibility Statement stated, in part, that "The proposed new rules permit families and individuals with a developmental disability to choose, control, and monitor their own support services, and the provider agencies will now be required to deliver the services determined by the families to be necessary, not what the providers determine necessary. To the extent that this focus changes what providers do, the providers will be affected."

The above text should be replaced by the following, which more clearly represents the Division's intent: "The proposed new rules permit families and individuals with a developmental disability to choose, control, and monitor their own support services. In addition to the services provided at N.J.A.C. 10:46A-1.1(c), the family support services to be provided include services recommended by the Family Support Regional Council and Division and Developmental Disabilities Council staff. The rules at N.J.A.C. 10:46A-2.3 and 3.1 delineate the process by which requests for services are made. That process, as described in the rules, is driven by a family's need, and is the result of a cooperative effort between the regional office, the family support coordinator, the regional Planning Council, the Statewide Family Support Council, and public and private provider agencies."

In order to assure that there is ample opportunity for comment, the Division has **extended the comment period** for the proposed new rules.

Submit comments by October 6, 1994 to:

James M. Evanochko
Administrative Practice Officer
Division of Developmental Disabilities
CN 726
Trenton, N.J. 08625

This notice is published pursuant to N.J.A.C. 1:30-2.7.

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Placement

Proposed New Rules: N.J.A.C. 10:46B

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4-25.4 and 165.2.

Proposal Number: PRN 1994-499.

Submit comments by October 6, 1994 to:

James M. Evanochko
Administrative Practice Officer
CN 726
Trenton, N.J. 08625

The agency proposal follows:

Summary

New Jersey law (N.J.S.A. 30:4-25.4) requires that when a person is found eligible for services from the Division of Developmental Disabilities, the Division shall advise the applicant of the particular service deemed most appropriate for the training, habilitation, care and protection of the developmentally disabled individual at the time of that determination. Services of the Division are those specialized programs or adaptations of generic services provided by any public or private agency, organization or institution which are directed toward the alleviation of a developmental disability or toward the social, personal, physical or economic habilitation or rehabilitation of an individual with a disability, and include case management, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, vocational training, recreation, counselling of the person with the disability and his family, information and referral services and transportation services (N.J.A.C. 10:46-2.3(a)).

The Division is limited in the services that it can provide by the amount of funds it receives annually from the Legislature. By 1985, the demand for residential, out of home, placements had exceeded the resources of the Division to provide them. As a result, the Division negotiated an interagency agreement with the Department of the Public Advocate to establish a waiting list procedure.

On June 9, 1993, the Appellate Division of Superior Court decided an appeal known as *S.I., by way of G. and S.I., v. New Jersey Division of Developmental Disabilities*, 265 *N.J. Super.* 251 (App. Div. 1993). This appeal, in part, challenged the Division's waiting list procedure in particular, its assignment of S.I. to a waiting list category rather than the immediate provision of the services requested by S.I. The Court found that even where the Legislature mandates a particular program, the mandate remains limited by the legislative appropriation process. The Court ordered the matter remanded to the Office of Administrative Law for a new hearing. The Court went on to order that the Division's priority and placement standards must be adopted as rules pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 to 15.

The Division immediately began to work on proposed rules to comply with that order. Rules were proposed in the New Jersey Register on May 2, 1994 at 26 N.J.R. 1752(a).

On March 22, 1994, the Appellate Court decided the matter of *P.F. and B.F., on behalf of their son, B.F., v. New Jersey Division of Developmental Disabilities*, Dkt. No. 304-93T1 (App. Div. March 22, 1994) *certif. granted* Dkt. No. 38, 475 (May 26, 1994). The Court upheld the position that the Division could not expend funds in excess of the amount appropriated by the Legislature. However, the Court expressed concern that the Division had not yet adopted rules consistent with the New Jersey Administrative Procedure Act, to insure application of uniform standards for priority and placement.

Upon the advice of the Office of the Attorney General, the Division decided to promulgate rules specific to the process of placement. While the rules proposed at 26 N.J.R. 1752(a) addressed the Division's waiting list and offers of services, it did not contain rules governing placement decisions. In order to assure that the Division complies with the wishes of the Court, the proposed new rules that follow are intended to establish the Division's rules for placement decisions.

N.J.A.C. 10:46B-1.1 describes the purpose of the rules. It also establishes the legal authority for the rules.

N.J.A.C. 10:46B-1.2 indicates that the rules apply to all eligible individuals who request placement outside their present living arrangement.

N.J.A.C. 10:46B-1.3 contains the definitions used in the chapter.

N.J.A.C. 10:46B-2.1 describes the general standards for placement.

N.J.A.C. 10:46B-3.1 establishes the conditions under which placements may be made available.

N.J.A.C. 10:46B-3.2 refers to the procedures for managing the Division's waiting lists which are currently proposed at 26 N.J.R. 1752(a).

N.J.A.C. 10:46B-3.3 describes the conditions under which emergency placements may be made.

N.J.A.C. 10:46B-3.4 establishes special requirements for the placement of children.

N.J.A.C. 10:46B-4.1 contains the general standards used by the Division in making decisions concerning placements.

N.J.A.C. 10:46B-4.2 describes the circumstances under which the Division may place an individual into a private institution.

N.J.A.C. 10:46B-5.1 provides that individuals who disagrees with a placement decision may appeal according to N.J.A.C. 10:48-1 et seq.

Social Impact

Proposed N.J.A.C. 10:46B will have social impacts on the Division, individuals who receive services and their families. The rules will have little effect on providers of services since the rules affect the decisions made between the Division and an individual served, including, in most cases, his or her family prior to placement. There is some limited impact on providers with regard to transfers from one service to another.

There are approximately 4,000 individuals waiting for residential placement and 460 individuals waiting for day programs. There are currently approximately 4,400 persons residing in developmental centers operated by the Division. In addition, the Division has approximately 900 in private institutions. Finally, there are approximately 5,900 persons placed in community based alternative living programs.

The rules are expected to have a positive reaction on the persons awaiting placements, as well as those persons already in placement. The rules will describe clearly what factors are considered when placement decisions are made. It will also describe, in some instances, the circumstances under which transfers may be made.

There may be some negative reaction to these rules, from individuals served. Each individual's abilities and needs are different. The Division must consider the circumstances of each person in light of his or her unique situation in making placement decisions. A rule does not readily cover every conceivable circumstance. Division staff will be expected to exercise reasonable professional judgement in making such decisions.

Economic Impact

The most significant impact of this Chapter is on the Division. Residential placements are the most expensive service provided by the

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Division. The average annual cost of a placement in a developmental center is $89,000. The average annual cost of a community alternate living arrangement is $47,835.

There is also a substantial impact on the families of the individuals awaiting services. In some instances, the families have arranged for a third party to pay for a placement or the families may be funding a placement privately.

The rules are not expected to have an economic impact on providers of services, since an individual is placed with them only when the Division has the funds to permit such a placement.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed rules do not impose reporting, recording or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since the rules apply only to placement individuals served by the Division and to the Division, the rules will not have any effect on small businesses.

Full text of the proposed new rules follows:

CHAPTER 46B
PLACEMENT

SUBCHAPTER 1. GENERAL PROVISIONS

10:46B-1.1 Purpose; authority

The Division of Developmental Disabilities, Department of Human Services intends this chapter to establish standards and criteria for the placement of eligible persons, pursuant to N.J.S.A. 30:4-25.6.

10:46B-1.2 Scope

The provisions of this chapter shall apply to all eligible individuals requesting placement. This chapter provides guidelines for placement decisions. Each individual's abilities and needs are different. Division staff shall consider the circumstances of each individual in light of his or her unique situation in making placement decisions. Division staff shall exercise reasonable professional judgement in making such decisions.

10:46B-1.3 Definitions

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

"Alternate service" means a service provided or funded by the Division to an individual when the most appropriate service is not available. Alternate services are those programs, interventions or options which will maintain the stability of the individual. Alternate services are necessarily less appropriate than the most appropriate service. Alternate services may also prove to be more restrictive than the most appropriate service and may not fully maximize the individual's developmental potential.

"Available" means the service may be offered within the limitations of funding in a given fiscal year.

"Basic needs" means food, shelter and personal safety.

"Congregate setting" means a community residence as defined in N.J.A.C. 10:44A, developmental center, or a nursing home.

"Director" means the Director of the Division of Developmental Disabilities.

"Division" means the Division of Developmental Disabilities.

"Individual Habilitation Plan (IHP)" means a written plan of intervention and action that is developed by the interdisciplinary team. It specifies both the prioritized goals and objectives being pursued by each individual and the steps being taken to achieve them. The IHP may identify a continuum of skill development that outline progressive steps and the anticipated outcomes of services. The IHP is a single plan that encompasses all relevant components, such as an education plan, a program plan, a rehabilitation plan, a treatment plan and a health care plan. The complexity of the IHP will vary according to the needs, capabilities and desires of the person. For an individual who has been determined by an Interdisciplinary team to require active treatment, the IHP addresses all needs identified. For an individual who makes only specific service requests, the IHP is a service plan which addresses only those specific requests.

"Interdisciplinary Team (IDT)" means an individually constituted group responsible for the development of a single, integrated IHP. The team shall consist of the individual receiving services, the individual's parents or family member (if the individual is a minor, or, if an adult, if the adult desires that the parent or family member be present), legal guardian, those persons who work most directly with the individual served, and professional and other representatives of service areas relevant to the identification of the individual's needs and the design and evaluation of programs to meet those needs.

"Long-term placement" means a placement which is anticipated to be of one year's duration, or longer.

"Private institution" means a private mental retardation facility located in New Jersey which is licensed in accordance with N.J.A.C. 10:47, or any out-of-State residential placements.

SUBCHAPTER 2. ADMINISTRATION

10:46B-2.1 General standards

(a) The Division recognizes that families function as the primary caregivers for most individuals with developmental disabilities.

(b) Individual and family support shall be provided whenever possible to avoid long-term out-of-home placements. Such support shall be provided to the family in accordance with N.J.A.C. 10:46A, subject to the availability of funding in the given fiscal year.

(c) The Division recognizes that, even with support, not all families can function as the individual's caregiver. The Division further recognizes that even when the family can support the individual, the family should not be expected to do so forever.

(d) The Division shall have responsibility for placement only:

1. If the individual is found eligible for services in accordance with N.J.A.C. 10:46; and

i. The family can no longer care for the individual; or

ii. The individual, if a competent adult, chooses to live away from his or her family; or

iii. Placement is recommended in the IHP; and

2. An appropriate placement is available.

(e) Whenever possible, the individual shall be offered an available placement in a setting which is least restrictive of his or her personal liberty.

(f) Because an individual's needs and abilities change, no out-of-home placement shall be considered permanent.

(g) When placement is appropriate, every effort shall be made to place an individual within New Jersey. Placement out-of-State shall be made only as a last resort.

(h) The Division shall make every effort to return individuals placed out-of-State to an in-State residence as soon as possible.

(i) The Division shall place an individual in appropriate licensed facilities. If an individual chooses to live independently in an unlicensed facility, but continues to receive support services from the Division, the provisions of this chapter shall not apply.

(j) When funding from a source other than the Division is available to the individual, Division staff may assist the individual in locating a placement. In such an instance, the Division shall not be responsible to provide any funding for placement.

SUBCHAPTER 3. PLACEMENTS

10:46B-3.1 Availability of placements

(a) When placement becomes necessary, the Division shall plan with the competent individual, his or her legal guardian and, where appropriate, interested family members, to identify an appropriate, available, out-of-home placement.

(b) The availability of placements shall be limited to the Division's funding in a given fiscal year. Prioritization for placement shall be governed by N.J.A.C. 10:48-4.

(c) All placements shall be in accord with all applicable Federal and State statutes, rules, and regulations, including the State Code of Criminal Justice provision at N.J.S.A. 2C:30-4, which prohibits the disbursement of public moneys, or the incurring of obligations in excess of legislative appropriation and limit of expenditure.

(d) In an effort to provide fairly for all individuals served, it is recognized that Division appropriations need to be applied across

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the State and across the entire fiscal Year and that planning and judgement are necessary and appropriate on a case-by-case basis as well to ensure that appropriations are not dissipated in an effort to meet extraordinary needs of one individual to the detriment of the rest of the population who require and could benefit from services needed to be funded from the same finite source.

10:46B-3.2 Waiting lists

If a placement recommended in the IHP is not immediately available, the individual shall be assigned to a waiting list category, in accordance with N.J.A.C. 10:48-4, and the Division shall provide an alternate services to the extent such services are available.

10:46B-3.3 Emergency placements

(a) An emergency need for placement shall be established when a long-term placement has been determined to be unavailable and the individual is homeless, or the Division cannot provide adequate alternate service in the existing situation to care for the individual safely.

(b) When the Division determines that the need for an emergency placement exists, the individual shall be offered a placement which can meet his or her basic needs, as required by N.J.A.C. 10:46B-1.3.

(c) When the Division determines that the need for an emergency placement exists, the development of an IHP is not required prior to placement.

(d) An emergency placement shall not be considered permanent.

(e) An IHP shall be developed within 30 days following an emergency placement to plan for an orderly transition to a more permanent placement, unless the IDT confirms the appropriateness of the emergency placement as a long term placement.

10:46B-3.4 Placement of children

(a) The placement of children shall conform to the requirements of N.J.S.A. 9:6B-1 et seq.

(b) Children shall be maintained in their own home whenever possible.

(c) When a child is placed outside his or her own home, he or she shall be placed with a relative, whenever possible.

(d) When a child cannot be maintained with his or her immediate or extended family, he or she shall be placed in a family setting, such as a community care home, as defined in N.J.A.C. 10:44B.

(e) A child may be placed in a congregate setting only when the Assistant Director certifies that no other placement exists.

(f) The IDT shall meet within the 30 days following placement to review needs of the child in the placement and to facilitate visitation by the family.

(g) A child placed outside his or her home has a right to be free from repeated changes in placement before his or her permanent placement or return home. Every effort shall be made to provide a stable placement until the child can return to his or her home and, except in emergencies, any change in the placement shall be made in accordance with the child's IHP.

(h) A child shall receive an educational program which will maximize his or her potential. Responsibility for the provision of the child's education shall remain with the local education authority (LEA). The Division shall advocate for the provision of a free and appropriate education for the child and shall attend any meeting with the LEA to develop the IHP.

(i) The need for placement shall be evaluated no less than annually, at the time of the IHP. At each IHP meeting, the IDT shall consider the possibility of returning the child to his or her family.

SUBCHAPTER 4. PLACEMENT DECISIONS

10:46B-4.1 General standards

(a) In some instances, appropriations for placements received by the Division may be targeted to specific populations. The budget language will identify the persons eligible for consideration for placement. The target populations may include, but are not limited to, those affected by the closing of a particular developmental center, a specific number of individuals from the waiting list or the return of individuals from out-of-State placements.

(b) In some instances, placements are required to accommodate individuals admitted to a service on an emergency basis.

(c) When a vacancy occurs in an existing program or an appropriation is targeted for a specific population, Division staff shall identify possible individuals appropriate for the placement using the following criteria, and considering any other information pertinent to the needs of the specific individual:

1. The waiting list category;
2. The age, sex and functioning level of the individual;
3. The present needs of the individual, as well as anticipated future needs;
4. The ability of the placement to meet the individual's needs;
5. The likelihood of the success of the placement;
6. The stability of the individual's present placement, including how well the placement meets the behavior and or medical needs of the individual;
7. The availability of a caregiver to continue to provide care;
8. The availability of continued funding by another party of another placement not funded by the Division;
9. The potential that the placement will be long term; and
10. Acceptance of the individual by the service provider.

(d) In the instance that a placement is equally appropriate for more than one individual, the placement shall be offered to the individual placed in Waiting List Category 1 the longest, unless exceptional circumstances warrant otherwise, based on each individuals circumstances and need for such services at the time placement becomes available.

(e) Information concerning the individual shall be provided to the individual(s) or agency(s) offering placement. The release of these records to further the individual's habilitation goals is consistent with the requirements of N.J.A.C. 10:41-2.13. Specific authorization from the competent individual or legal guardian shall not be required.

(f) When an individual is identified for placement, the individual and/or legal guardian shall be notified by telephone and in writing.

(g) When a placement is under consideration, the competent individual or legal guardian shall be given an opportunity to tour the placement and the site of any day programs to be provided.

(h) If deemed necessary by the Division, placement shall be contingent upon an overnight visit at the proposed placement. Failure to permit an overnight visit shall be considered a rejection of the placement offer.

(i) If a placement is offered and rejected, the urgency category of the individual shall be reevaluated. A recommendation for a change in the waiting list category may be made in accordance with a review of the individual's circumstances.

(j) An IHP shall be developed at least 30 days prior to the projected date of placement, except in an emergency. Family members may attend, unless there is an objection by the competent individual or legal guardian.

(k) The IHP shall indicate the habilitation goals to be achieved by the placement, and the services needed.

(l) The IHP shall be reviewed and revised as necessary, but no less than 30 days following placement.

(m) Every attempt shall be made to place the individual in an area of the State that is in geographic proximity to interested family and friends, if the individual so chooses.

10:46B-4.2 Placements into private institutions

(a) Placements into private institutions shall not be considered routine and may only be approved in extraordinary circumstances by the Division Director.

(b) When a person has been placed outside the State of New Jersey, either by the Division, an LEA, a family member, or another State or county entity, the Division shall make every effort to return him or her to the State of New Jersey as soon as possible.

(c) When the Division accepts responsibility for services, an individual shall be returned from a private institution to his or her own or family home or community placement whenever possible. If an individual cannot be placed in his or her own family home and the Division's resources do not allow community placement, the individual shall be placed in the most appropriate placement available.

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(d) The Division shall only place an individual in a facility licensed by the state in which it is located.

(e) Funding shall be authorized only when a contract exists between the private institution and the Division.

(f) Funding, if available, of a private institution may be authorized if one of the following conditions are met:

1. The individual is currently in a placement made by the Division and can no longer be maintained in that placement and the only option the Division Director can identify is private institutional placement; or

2. The individual's life or safety is threatened or the community is at risk and the individual cannot be appropriately cared for in a developmental center and the only option the Division Director can identify is a private institutional placement.

(g) All requests for funding shall be made through the appropriate Assistant Director.

(h) If the Assistant Director supports the request, he or she shall forward the request for funding to the Director.

(i) The Director shall communicate his or her decision to the Assistant Director in writing.

(j) When the Division has located a placement other than the private institution, the Division shall hold a meeting to revise the IHP and an offer of placement shall be made in writing to the individual or legal guardian.

1. The offer of placement shall be contingent upon a successful overnight visit by the individual to the proposed placement.

2. The legal guardian, if any, shall also be invited to visit the proposed placement.

3. Once a successful overnight visit has occurred, admission to the new placement may be scheduled.

4. If the competent individual or legal guardian does not agree to an overnight visit, the Division shall determine that it cannot implement the IHP. The individual or legal guardian shall be notified in writing that the Division shall cease funding at the private institution within 90 days.

5. If the individual or legal guardian reconsiders and agrees to an overnight visit, the Division shall withdraw its notice to cease funding, once the visit has been completed.

SUBCHAPTER 5. APPEALS

10:46B-5.1 Placement appeals

(a) Placement decisions may be appealed in accordance with N.J.A.C. 10:48.

(b) Specific offers of placement shall be considered contested cases.

(c) Recommendations of placement changes, where no specific offers of placement have been made, shall be considered non-contested.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Long-Term Care Services

Proposed Readoption with Amendments: N.J.A.C. 10:63

Proposed Repeal: N.J.A.C. 10:63-1, 2, 2A, 4 and Appendix I

Proposed New Rules: N.J.A.C. 10:63-1, 2 and Appendices A to Q

Proposed Recodification: N.J.A.C. 10:63-5, now codified as N.J.A.C. 10:63-4

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-6a(4)(a)b(14); 30:4D-7, 7a, b and c; 30:4D-12; Section 1919 of the Social Security Act; 42 U.S.C. 1396r; 42 CFR 483; P.L. 1985 c.303.

Agency Control Number: 94-P-11.

Proposal Number: PRN 1994-470.

Submit comments by October 6, 1994 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN 712
Trenton, New Jersey 08625-0712

The agency proposal follows:

Summary

N.J.A.C. 10:63 became effective on November 28, 1989, for a period of five years which expires on November 28, 1994, pursuant to Executive Order No. 66(1978). The Division of Medical Assistance and Health Services has made an administrative review and determined that the rules require revision. This proposal is the result of that revision, and contains amendments, recodification, repeals and new rules. The intent of the proposal is to set forth rules pertaining to the provision of, and reimbursement for, Medicaid covered services in a nursing facility setting. Some requirements have remained the same, and some have been altered, as indicated in this summary. This proposal has been prepared to clearly present updated requirements.

N.J.A.C. 10:63-1 contains the chapter's scope, definitions, provisions for provider participation, authorization process, admission policies, and clinical audit, use of resident's income for personal needs allowance (PNA), and resident's rights. This subchapter is being repealed, although some requirements have been carried over into the new rules, as indicated in the summary of new rules which follows.

N.J.A.C. 10:63-2, entitled "Billing Procedures" provided the information and procedures that providers needed to follow in order to secure payment. Since this Chapter was last adopted, the Division of Medical Assistance and Health Services has contracted with Unisys as their fiscal agent. Therefore the subchapter is being repealed. Information and procedures for billing can be found in the Appendix entitled NF Services Fiscal Agent Billing Supplement (unpublished; available from the Division).

The new N.J.A.C. 10:63-2 contains policies and procedures pertaining to specific Medicaid-covered services provided in a nursing facility setting. Text for this chapter was previously found in N.J.A.C. 10:63-2A. The text of N.J.A.C. 10:63-2A is being integrated into the new version of 10:63-2. Therefore, the current text of N.J.A.C. 10:63-2A is being repealed. New regulations are being proposed at N.J.A.C. 10:63-2.21 Special Care Nursing Facilities (SCNF).

N.J.A.C. 10:63-3 describes the methodology to be used by the State of New Jersey to establish prospective per diem rates for the provision of nursing facility services under the State's Medicaid program. Additions to this subchapter include the rate setting methodology for SCNFs.

N.J.A.C. 10:63-4

The current text of subchapter N.J.A.C. 10:63-4 is being repealed.

N.J.A.C. 10:63-4.1, Medicare/Medicaid has been updated and recodified as N.J.A.C. 10:63-1.12.

N.J.A.C. 10:63-4.2, Out-of-State placement, has been updated and recodified as N.J.A.C.10:63-1.5(h).

N.J.A.C. 10:63-5

This subchapter has been recodified as subchapter N.J.A.C. 10:63-4. The contents pertain to audits. There is no change in text associated with this readoption.

The following summary highlights the substantive provisions of the proposed new subchapters, with an emphasis on revisions:

Subchapter 1. General Provisions

N.J.A.C. 10:63-1.1 Scope

The basic concept of the text contained in this section is the same as the current text at N.J.A.C. 10:63-1.1.

Language has been added or modified to make the information clearer and more concise. For example "eligible recipients" has been changed to "eligible children and adults". The text has been modified to the general term nursing facility (NF) rather than identifying specifically SNFs or ICFs.

The Division has added text which explains that the chapter addresses the provision of, and reimbursement for, required services to attain and maintain the highest practicable functional status to meet the needs of the individual.

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N.J.A.C. 10:63-1.2 Definitions

The proposed text is updated and expanded to provide clarification with new definitions. The following is a list of the new definitions:

"Advanced directives," "air fluidized therapy bed," "case mix," "conventional nursing facility," "equitable order," "low airloss therapy bed," "minimum data set (MDS)," "occupancy level," "resident," "respiratory care practitioner," "Section Q," "special care nursing facility (SCNF)," "specialized services," "Standardized Resident Assessment (SRA)," "Statewide occupancy level," and "waiting list." These terms will be discussed in the section where they appear.

Definitions that are no longer applicable have been deleted. These include: "Initial Assessment and Care Plan," "long term care services for each patient," "Medical Plan of Care and Treatment," "Periodic Medical Review (PMR)," "utilization control" and "utilization review."

N.J.A.C. 10:63-1.3 Program participation

N.J.A.C. 10:63-1.3 provides basic program requirements, such as licensing by the New Jersey Department of Health, and various application procedures.

N.J.A.C. 10:63-1.4, Private pay, includes restrictions regarding the solicitation by LTCFs of private pay contracts with patients.

N.J.A.C. 10:63-1.5, Occupancy level, contains the formula to be used by a LTCF in calculating its Medicaid occupany level.

N.J.A.C. 10:63-1.6, Termination of provider agreement, was previously at N.J.A.C. 10:63-1.15(b). Procedures have been clarified in that termination of a provider agreement now has specific time frames. If the New Jersey State Department of Health or the Secretary of the Department of Health and Human Services find that deficiencies pose immediate jeopardy to a resident's health and safety, the provider agreement shall be terminated 23 days from the survey date. If the deficiencies do not pose immediate jeopardy to a resident's health and safety, the provider agreement shall be terminated ninety days from the survey date.

N.J.A.C. 10:63-1.7, Administrative appeal of denial termination or nonrenewal of NF certification or Medicaid Provider Agreement, was codified as N.J.A.C. 10:63-1.15(d).

N.J.A.C. 10:63-1.8 Admissions policy, transfer and readmission; general

Information in this section is currently at N.J.A.C. 10:63-1.16. Language has been added or modified for clarification. The intent of this section is to establish requirements for preadmission screening pursuant to N.J.S.A 30:4D-17.11 through 15. The Division is adding N.J.A.C. 10:63-1.9 describing the policies NFs must use regarding waiting lists. In addition, the existing admission policies that are being recodified remain in effect. For example, a Medicaid recipient in a NF who is transferred to an acute care hospital does not require preadmission screening prior to returning to a NF. On the other hand, a Medicaid recipient with a diagnosis of mental illness or mental retardation would be subject to the PASARR requirements of this chapter. Requirements regarding the involuntary transfer of a Medicaid recipient are found at N.J.A.C. 10:63-1.10.

N.J.A.C. 10:63-1.11 NF authorization process

Information in this section currently exists at N.J.A.C. 10:63-1.6. N.J.A.C. 10:63- 1.5(g) Authorization of Out-of-State placement was moved from N.J.A.C. 10:63-4.2. The proposed new rule provides a description of the Federal PASARR requirements, which have been incorporated by reference in the authorizing statutes of this chapter. These rules also provide a more concise definition of Track of Care. Other proposed changes in this section are: 1. Out-of-State long-term care must be prior authorized by the Division and out-of-State placement for emergency situations has been omitted because generally speaking, patients in emergent need should not be directly referred to a nursing facility; 2. prior to submitting a request for out-of- state placement, the recipient must comply with the requirements of Pre-Admission Screening; and 3. the request for out-of-State placement must be sent to the Office of Medical Care Administration rather than Bureau of Long Term Care.

N.J.A.C. 10:63-1.12 Clinical audit definition

The text previously at N.J.A.C. 10:63-1.5, entitled Utilization Control, has been retitled and transferred to this section. The text defines the role of DMAHS professional staff in determining the continued need for NF services and the appropriateness of the services provided by the NF. This section also describes the source of the authority under which DMAHS ill enforce the standards for this chapter.

N.J.A.C. 10:63-1.13 Clinical and related records

The text for this section was previously located at N.J.A.C. 10:63-1.8, Clinical Records and N.J.A.C. 10:63-1.14, Records. The proposed section has been retitled. Current text at N.J.A.C.-1.7 ("Reimbursement by case mix classification") has been deleted.

N.J.A.C. 10:63-1.14 Absence from facility

This section is being recodified from N.J.A.C. 10:63-1.13 to N.J.A.C. 10:63-1.8. The only difference being that, in this proposal, N.J.A.C. 10:63-1.8(a)1.i. informs the NF that pending the outcome of the Division's review, the facility may be subject to forfeiture of "bed hold" reimbursement if the NF does not leave the bed vacant. This provisions has been added to further clarify the existing bed reserve policy.

N.J.A.C. 10:63-1.15 Complaints

The proposed section has been retitled but text has been copied recodified from N.J.A.C. 10:63-1.18, Long term care complaint system.

N.J.A.C. 10:63-1.16 Utilization of resident's income for cost of care in the nursing facility and for PNA

Information in this section was previously found in N.J.A.C. 10:63-1.19 and explains the policies and procedures NFs must use to determine utilization of a resident's income for both Personal Needs Allowance (PNA) and the cost of care in the NF.

N.J.A.C. 10:63-1.17 Residents rights

Information from this section was previously at N.J.A.C. 10:63-1.9, entitled Patient's Rights. The proposed section focuses on the NF's responsibility in the area of resident's rights.

N.J.A.C. 10:63-1.18 Medicare/Medicaid

Information in this section was previously found in N.J.A.C. 10:63-4.1, and provides the policies that NFs who participate in the New Jersey Medicaid program must follow regarding reimbursement of NF services provided to recipients who are eligible for Medicaid.

The following describes current provisions of the Long Term Care Manual which have been deleted as part of the repeal of subchapter 1.

N.J.A.C. 10:63-1.13 Absence from facility

Text of this section was transferred to section N.J.A.C. 10:63-1.8, therefore, this section has been deleted.

N.J.A.C. 10:63-1.14 Records

This section has been deleted. Record requirements are contained in subchapter 2.

N.J.A.C. 10:63-1.15 Program Participation

The text of this section was transferred to section N.J.A.C. 10:63-1.3, therefore this section is being deleted.

N.J.A.C. 10:63-1.16 Admissions policies

The text of this section was transferred to section N.J.A.C. 10:63-1.4, therefore this section has been deleted.

N.J.A.C. 10:63-1.17 (Reserved)

This section, previously reserved, has been deleted.

N.J.A.C. 10:63-1.18 Long term care facility complaint system

The text of this section was transferred to section N.J.A.C. 10:63-1.9 and renamed Nursing facility complaint system, therefore this section has been deleted.

N.J.A.C. 10:63-1.19 Utilization of patients income for Personal Needs Allowance (PNA) and cost of care in long-term care facility

The text of this section was transferred to section N.J.A.C. 10:63-1.10. Therefore, this section has been deleted.

N.J.A.C. 10:63-1.20 Unannounced off-hour Medicaid visits

This section has been deleted, since the procedure is adequately provided for in the licensing rules and the general authority of the Department.

N.J.A.C. 10:63-1.21 (Reserved)

This section, previously reserved, has been deleted.

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N.J.A.C. 10:63-1.22 (Reserved)

This section, previously reserved, has been deleted.

N.J.A.C. 10:63-1.23 (Reserved)

This section, previously reserved, has been deleted.

Subchapter 2. Nursing Facilities Services

N.J.A.C. 10:63-2.1 Nursing Facilities Services; eligibility and service delivery

This text is basically the same as the current text of N.J.A.C. 10:63-2A.1. Text describes clinical eligibility requirements for NF level services. Language has been added to define clinical eligibility for children.

N.J.A.C. 10:63-2.2 Nursing services

The text contained in this section regarding nursing services is basically the same as the current text of N.J.A.C. 10:63-2A.1(f) which describes basic nursing services. For example, the hourly standards proposed below at N.J.A.C. 10:63- 2.2(a)1 are the same as the current text of N.J.A.C. 10:63-2A.1(f).

Other nursing services listed in the proposal at N.J.A.C. 10:63-2.2(d),(e) and (f) are a condensed version of the current text of N.J.A.C. 10:63-2A.1(f) 2 and 3.

There is new regulatory material being proposed at N.J.A.C. 10:63-2.2(a)i below relating to Section Q of the New Jersey Standardized Resident Assessment (SRA). However, the NF has been required to classify and record nursing service requirements for each individual Medicaid recipient on Section Q of the SRA instrument since October 1, 1990 with the introduction of the Minimum Data Set (MDS). The SRA is defined as a State document which is an instrument which is used to gather resident assessment data.

New language has been added at N.J.A.C. 10:63-2.2(c)11 to describe restorative nursing services for children and at N.J.A.C. 10:63-2.2(f) to clarify how additional nursing service categories may be counted for the individual resident. New language has also been added to clarify the definitions of Wound Care at N.J.A.C. 10:63-2.2(f)1 and Tube Feedings at N.J.A.C. 10:63-2.2(f)2.

N.J.A.C. 10:63-2.3 Physician services

The text contained in this section is basically the same as the current text of N.J.A.C. 10:63-2A.3. For example, the requirement that there be a Medical Director for each NF, and the duties of the Medical Director are currently codified at N.J.A.C. 10:63-2A.3(a)2i.

The Division is proposing to add a section captioned "attending physician" at N.J.A.C. 10:63-2A.3(c). However, the text that follows is basically the same as currently appears at N.J.A.C. 10:63-2A.3(a)2iii. The text of both the current and proposed rule require that medical information about the resident's condition shall be supplied to the NF prior to, or at the time of admission. Also both texts require that each resident be examined by a physician within the five day period preceding admission or within 48 hours after admission.

The time frame for physician visits as proposed at N.J.A.C. 10:63-2.3(c)5 are the same as those currently codified as N.J.A.C. 10:63-2A.3(a)2iv(6). The provision that physician(s) should make additional visits when the resident's condition changes has been retained. The requirements for initial evaluation proposed at N.J.A.C. 10:63-2.3(c)2 are being revised specifically to indicate the type of data requested by the Medicaid program. The requirement for an annual complete physical examination, as the medical component of the comprehensive resident assessment, is proposed at N.J.A.C. 10:63-2.3(c)2vi(4).

N.J.A.C. 10:63-2.4 Rehabilitative services

This material is currently codified at N.J.A.C. 10:63-2A.2(g). The proposal contains the same basic requirement that rehabilitation services include physical therapy, occupational therapy, and speech-language therapy provided by a qualified therapist. Also, there must be an order for the evaluation of the need for therapy signed by the attending physician. Any rehabilitation treatment must be provided under the direct supervision and in the presence of a qualified therapist or physiatrist.

There is one new requirement being proposed at N.J.A.C. 10:63-2.4(a)1 below. The therapist is now required to complete a written report of therapy recommendations within 14 days of the physician's order and included in the clinical record for review by the attending physician.

The text of N.J.A.C. 10:63-2.4(a)3, providers of service, has been copied verbatim from N.J.A.C. 10:63-2A.2(g)4.

N.J.A.C. 10:63-2.5 Resident activities

This material is currently codified at N.J.A.C. 10:63-2A.1(m), captioned "patient activities."

The basic concept and purpose of activities is to prevent regression or to encourage the development of restoration of self-care. This remains the same.

Additional language has been added with this proposal to indicate that activities should be age appropriate and that outside community resources shall be utilized whenever possible.

The staff qualifications remain basically the same as currently contained at N.J.A.C. 10:63-2A.1(m)1. However the Division is now proposing that for a NF that provides care exclusively for children, the Resident Activities Director who does not possess a baccalaureate degree shall have one year of experience in a recreational program for children.

There is one requirement that is being deleted upon adoption. The current provision at N.J.A.C. 10:63-2A.1(m)1,iii. allowing for a patient activities consultant to be appointed if the coordinator does not meet the qualifications or if there is significant unresolved problem, is not being retained. This topic is addressed generically at N.J.A.C. 10:63-2.16 Consultation Services.

The requirements of N.J.A.C. 10:63-2.5(c)through (f) are essentially the same as contained at N.J.A.C. 10:63-2A.1 (m) through 5. There is one new requirement being added at N.J.A.C. 10:63-2.5(e)2 below. The activities staff is required to conduct an initial assessment of the resident's activity needs within 14 days of the date of admission. This information shall form the basis of the activities component of the SRA. The time frame concurs with the requirement for comprehensive resident assessment.

N.J.A.C. 10:63-2.6 Social services

The current regulations appeared at N.J.A.C. 10:63-2A.1(n).

The qualifications allow for social work services to be provided by persons qualified under the New Jersey Department of Health regulations at N.J.A.C. 8:39-39. This is the current standard (see N.J.A.C. 10:63-2.6(b)1 below).

The qualifications are being modified with the proposal to reflect the legislation that licenses social workers. This modification allows for social workers to be qualified under the cited state legislation.

The staffing requirements remain the same (N.J.A.C. 10:63-2A.1(n)1iii., N.J.A.C. 10:63-2.6(b)2i.).

The social service functions in N.J.A.C. 10:63-2.6(c) are basically the same as those in N.J.A.C. 10:63-2A.1(n)3-6.

N.J.A.C. 10:63-2.7 Pharmacy services

The current text of N.J.A.C. 10:63-2A.4 has been retained almost in its entirety. For example, the requirements of the consultant pharmacist at N.J.A.C. 10:63-2A.4(f) are now being proposed at N.J.A.C. 10:63-2.7(f) and are unchanged except for the deletion of one clause ("in cooperation with the LTCF").

The requirements for prescribed legend drugs and "stop codes" remain essentially the same.

There is one minor change regarding refills. The current text contains a note with an exception regarding Intermediate Care, Level IV-B patients. This has been deleted from N.J.A.C. 10:63-2A.4(c) because this exception to level IV-B patients is no longer appropriate.

N.J.A.C. 10:63-2.8 Consultation and referral services

The current text appears at N.J.A.C. 10:63-2A.2(a)4.

The proposed text is the same as the existing text, with the addition of the language now proposed at N.J.A.C. 10:63-2.8(e). The Division is proposing a requirement that, following the initial consultation, the record (medical chart) shall contain certain information, including date(s) of service, history and physical data, reports of any diagnostic procedures performed and diagnosis and treatment. Any subsequent reports shall include date(s) of service, change in resident's condition, medications and/or treatment.

N.J.A.C. 10:63-2.9 Mental health services

The current text appears at N.J.A.C. 10:63-2A.2(e). The basic requirements are being retained in this proposal. Mental health services must be available to Medicaid eligible residents and can be rendered by either a licensed psychiatrist or psychologist. An initial consultation can be performed only upon written order of the attending physician.

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Mental health providers will continue to submit the same form (FD-07) to the appropriate Medicaid District Office (MDO).

N.J.A.C. 10:63-2.10 Dental services

The current text appears at N.J.A.C. 10:63-2A.2(c). The proposed text at N.J.A.C. 10:63-2.10(a) and (b) below is the same as the current text at N.J.A.C. 10:63-2A.2(c)1 and 2.

The Division is proposing some new requirements at N.J.A.C. 10:63-2.10(c) and (d) below. The dentist treating the resident must establish a time frame for the next periodic examination either at the time of the resident's examination or the completion of the resident's treatment. With respect to a child residing in a NF, care shall be provided according to the American Dental Association Pediatric protocol.

N.J.A.C. 10:63-2.11 Podiatry services

The proposed text at N.J.A.C. 10:63-2.11 below is basically the same as the current text at N.J.A.C. 10:63-2A.2(f.)

N.J.A.C. 10:63-2.12 Chiropractor services

The proposed text has been copied verbatim from N.J.A.C. 10:63-2A.2(b).

N.J.A.C. 10:63-2.13 Vision care services

The proposed text has been copied verbatim from N.J.A.C. 10:63-2A.2(j).

N.J.A.C. 10:63-2.14 Laboratory, X-ray,and other diagnostic services

The current text of N.J.A.C. 10:63-2A.2(d) has been transferred verbatim to the proposed section below pertaining to laboratories.

With respect to x-rays, the text of N.J.A.C. 10:63-2A.2(d)2 has been incorporated into the proposed text of N.J.A.C. 10:63-2.14(b) below.

The Division has added CAT scans and MRI (magnetic resonance imaging) and ultra-sound as examples of the diagnostic services. The Division has also added language indicating that the physician who orders the diagnostic tests shall be promptly notified of the test results and that all findings and reports be recorded in the recipient's clinical record.

N.J.A.C. 10:63-2.15 Medical supplies, (DME), special medical equipment

The current text of N.J.A.C. 10:63-2A.1(i) has been included as N.J.A.C. 10:63-2.15(a). The current text of N.J.A.C. 10:63-2A.1(u) has been included as N.J.A.C. 10:63-2.15(b).

U.S. Pharmacopoeia standards should be identified with respect to durable medical equipment (DME); the current text of N.J.A.C. 10:63-2A.1(j) is being proposed as N.J.A.C. 10:63-2.15(c). The Division is adding language indicating that certain mattresses and power floatation beds are considered part of the NF's cost and cannot be billed directly to the program by the suppliers.

The Division is adding N.J.A.C. 10:63-2.15(c) to deal with situations where a resident in a NF may require special medical equipment. The requirement that ownership of such special equipment vests in the Division with the recipient being granted a possessory interest is based upon existing policy set forth in N.J.A.C. 10:59-1.9 in the Medical Supplier Manual.

The NF is required to notify the MDO when the special equipment is no longer in use.

Requests for special medical equipment must be prior authorized by the MDO. The NF must submit documentation from the attending physician supported by appropriate therapy personnel as necessary.

The Division is proposing criteria for air fluidized and low air loss therapy beds, which are considered special medical equipment. The criteria pertaining to this type of bed indicates that the recipient must meet all the criteria listed in N.J.A.C. 10:63-2.15(d)3i(1) through (4) below. The professional staff of the MDO may perform an on site visit to insure compliance with the full standard. Air fluidized and low air loss therapy beds are not covered when the circumstances cited in N.J.A.C. 10:63-2.15(d)3ii are present.

Prior authorization will be granted for 30 days only. Continued authorization shall require approval on a monthly basis. The confirmation that needs to be included on the prior authorization form (FD-354) is listed at N.J.A.C. 10:63-2.15(d)3iii(1) through (8) below.

N.J.A.C. 10:63-2.16 Consultation services

Consultation services have always been a required component of the New Jersey Medicaid program (reference is made to N.J.A.C. 10:63-2A.1 (c)).

The Division is proposing text at N.J.A.C. 10:63-2.16(a) below indicating that if a NF has a significant unresolved or recurring problem, the NF shall be required to provide appropriate consultation until the problem(s) is corrected.

N.J.A.C. 10:63-2.17 Transportation services

The current text regarding transportation services at N.J.A.C. 10:63-2A.2(i). has been transferred verbatim to the proposed section below.

N.J.A.C. 10:63-2.18 Bed/board

The current policy appears at N.J.A.C. 10:63-2A.1(b) and both are required services.

This proposal has added language indicating that when a NF provides care to children, protective cribs and other furniture for children shall be available.

N.J.A.C. 10:63-2.19 Housekeeping, maintenance, and laundry service

The current text appearing at N.J.A.C. 10:63-2A.1(d) and (e) are being combined in this proposal. The text is not being changed.

N.J.A.C. 10:63-2.20 Non-covered services

The current text appears at N.J.A.C. 10:63-2A.5.

The basic general exclusions pertaining to private duty nursing, private attendant services, non-medical services, etc. have been retained in this section.

Also, the Division has retained the requirement prohibiting payment on a fee-for-service basis for practitioner or therapy services to someone who has direct or indirect financial interest in the NF.

The Division is adding the restriction that no payment will be made for partial care services in independent clinics for Medicaid recipients residing in a NF.

N.J.A.C. 10:63-2.21 Special care nursing facility (SCNF)

Currently, the New Jersey Medicaid program has provider agreements with 17 New Jersey Medicaid certified nursing facilities and some five nursing facilities outside of New Jersey to provide special nursing facility services over and above the scope of a conventional nursing facility (NF). Some examples of the special care NF units are head trauma, AIDS, ventilator, neurological impairment, pediatric, etc.

There are no special licensure and Medicaid certification standards for special care nursing facilities other than what is already required for NF's. The uniqueness, however, is with their package of special services and, of course, their Medicaid rate of payment. The special care NF unit/facility's Medicaid provider agreement has been individually negotiated with the Division, and the Medicaid per diem rate has been on an actual cost basis (and in some cases, actual costs plus incentives), independent of the standard Medicaid reasonable cost-based Cost Allocation Reimbursement Evaluation (CARE) system.

The Division is proposing special care NF standards and reimbursement policies for publication in the New Jersey Register. There are three critical elements in the proposed policies noted:

a. Development of comprehensive generic care standards for all the special units/facilities as opposed to individually negotiated agreements based on each specialty;

b. Establishment of clinical parameters which define short term, aggressive rehabilitation and/or complex care, the objective of which is to require discharge planning to alternative health care settings or community integration;

c. Modification of the Medicaid CARE reimbursement methodology, allowing for unique cost limits on a "peer grouping" basis in staffing and other components of the rate.

Historically, the New Jersey Medicaid census in NF special care programs has been low in number as each program uniquely defined its own admission/continued stay criteria, often to the exclusion of individual Medicaid recipients. In such cases, out-of-state placement was the only alternative. This proposal will standardize admission and continued stay criteria, hence, enhancing equal access for the Medicaid recipient in need of service through the PreAdmission Screening Process (PAS) under the Division's authority.

Subchapter 3. Cost Study, Rate Review Guidelines and Reporting System for Long-Term Care Facilities

N.J.A.C. 10:63-3.1 Timing

The text was changed to reflect the current name of the office in the Department of Health which calculates nursing facility rates.

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N.J.A.C. 10:63-3.2 Rate components

The text was changed to add a separate class of facilities (that is, Class III—special care NFs (SCNFs)) which are to be given special treatment for reimbursement purposes. It notes the criteria for recognition of facilities as SCNFs. The different types of facilities within this class are as follows: Ventilator/Respirator, TBI/Coma, Pediatric, HIV, Neurologically Impaired, and Behavioral Management.

Text was added which describes the proposed methodologies for reimbursement of therapy costs for each class of facility and the methodology for reimbursement for respiratory therapy costs for SCNFs.

The text was changed to describe how SCNF costs and statistics are to be used in the calculation of the administrator and assistant administrator cost screens.

Text was added, disallowing certain legal costs.

N.J.A.C. 10:63-3.3 Equalized costs

The text of this section has been copied verbatim.

N.J.A.C. 10:63-3.4 Raw food costs

Text was added to create a separate food cost screen for each type of SCNF.

N.J.A.C. 10:63-3.5 General services expenses

Text was added to create non-food general services and legal cost screens for each type of SCNF.

N.J.A.C. 10:63-3.6 Property operating expenses

Text was added to define reasonable square feet for determination of calculating cost screens for property operating expenses of SCNFs.

N.J.A.C. 10:63-3.7 Special amortization

Replacing "LTCF" with "NF" was the only modification made to the text of this section.

N.J.A.C. 10:63-3.8 Routine patient care expenses

Text was added to create a separate nursing services salary screen for each type of SCNF, including provisions for additional nursing hours for SCNF patients.

Text was amended to create separate cost screens for each type of SCNF for the following cost components: medical supplies, patient activities, medical director, pharmaceutical consultant, non-legend drugs, social services, and oxygen.

N.J.A.C. 10:63-3.9 Property—capital costs (including return on investment (ROI))

The text of this section was modified replacing "LTCF" with "NF" and a spelling correction was made to paragraph (d)3.

N.J.A.C. 10:63-3.10 Buildings

Text has been added to establish reimbursement of SCNF property capital costs for building and fixed equipment using the same methodology and limits as Class I NFs.

Text of this section was modified replacing "LTCF" with "NF"

N.J.A.C. 10:63-3.11 Land

Replacing "LTCF" with "NF" was the only modification made to the text of this section.

N.J.A.C. 10:63-3.12 Movable equipment

Replacing "LTCF" with "NF" was the only modification made to the text of this section.

N.J.A.C. 10:63-3.13 Maintenance and replacements

Text was amended to create a separate maintenance and replacement cost screen for each type of SCNF.

N.J.A.C. 10:63-3.14 Property insurance

Text was added to create a separate property insurance cost screen for each type of SCNF.

N.J.A.C. 10:63-3.15 Target occupancy levels

Text was added to define the target days to be used in the calculation of property capital and property operation components of the per diem rate for SCNFs.

N.J.A.C. 10:63-3.16 Restricted funds

Replacing "LTCF" with "NF" was the only modification made to the text of this section.

N.J.A.C. 10:63-3.17 Adjustments to base period data

Replacing "LTCF" with "NF" was the only modification made to the text of this section.

N.J.A.C. 10:63-3.18 Inflation

The text was corrected to reflect the appropriate title of a reference source and the rate setting office at the Department of Health.

N.J.A.C. 10:63-3.19 Working capital provision and total rates

Replacing "LTCF" with "NF" was the only modification made to the text of this section.

N.J.A.C. 10:63-3.20 Appeals process

The text was corrected to reflect the appropriate title of the rate setting office at the Department of Health.

Text was added to allow the Director of the Division of Medical Assistance and Health Services to appoint a designee to approve rate appeals.

N.J.A.C. 10:63-3.21 Transitional relief for salary region adjustment

Replacing "LTCF" with "NF" was the only modification made to the text of this section.

N.J.A.C. 10:63-3.22 Transitional relief for salary region adjustment

Replacing "LTCF" with "NF" was the only modification made to the text of this section.

N.J.A.C. 10:63-3.24 Transitional relief for salary region adjustment

This section was added to reflect language continued in P.L. 1994, c.67 on extending the salary region adjustment for an additional six months.

Subchapter 4. Miscellaneous Payment

The current text of this subchapter is being proposed for recodification as follows:

N.J.A.C. 10:63-4.1 Medicare/Medicaid

The text of this section has been updated and can now be found in N.J.A.C. 10:63-1.12.

N.J.A.C. 10:63-4.2 Out-of-State placement

The text of this section has been updated and can now be found in N.J.A.C. 10:63- 1.5(h).

Subchapter 5. Audit

This subchapter is being proposed for recodification as N.J.A.C. 10:63-4, with no change in text. The rules contain audit cycle, audit format, and final audited rate calculation requirements.

The existing text of N.J.A.C. 10:63-2 is being repealed because of the change in the Division's fiscal agent, which is now Unisys, and because of the need for more up to date standards, now provided in the proposed new rules.

The rules have been amended since the last readoption. In 1990, the Division adopted rules which reflected both federal and State legislation regarding admission of patients to nursing facilities (NFs), formerly called long term care facilities (LTCF's). The Federal legislation required a review to determine if the patient required active treatment for either mental illness or mental retardation (see section 1919(e) of the Social Security Act, codified as 42 U.S.C. 1396r). This process of pre-admission screening and annual resident review is referred to as PASARR. In addition, there is State legislation requiring every individual who at the time of application is eligible for Medicaid or will become eligible for Medicaid within six months, to undergo a preadmission screening (PAS). (See N.J.S.A. 30:4D-17.10 et seq.)

The Division also amended the CARE guidelines (cost accounting rate evaluation guidelines, N.J.A.C. 10:63-3) to establish a reimbursement methodology based on a single NF per diem rate.

Social Impact

The proposed readoption impacts on persons who qualify for NF level care, whether they are adults or children. The continuation of the rules is necessary to describe the policies and procedures for admission to a NF, and the rights of those individuals residing in a NF.

This proposed readoption with repeals, new rules and amendments impacts directly on those NFs that are participating providers in the New Jersey Medicaid program. The proposed text indicates the services they need to provide, the basis of reimbursement, the method of billing, and the requirements of program participation.

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The rules are necessary to clearly establish the requirements for NF "providership" and the services that are rendered to residents in the NF. There is an indirect impact upon hospitals, who must be aware of the PAS requirements prior to discharging inpatients to a NF.

With respect to SCNF, the Division anticipates that many New Jersey Medicaid recipients currently residing in existing NF special programs may no longer require this level of care. Some will welcome placement in a less restrictive environment and Division staff will assist them in finding appropriate alternatives. Others, however, regardless of the inappropriateness of the current setting, are socially comfortable and will resist efforts towards discharge of any kind. Procedures are included which may be used to appeal such Department decisions.

Economic Impact

Medicaid recipients are required to contribute to the cost of their care from their available income. The amount of income that is actually available is determined by the county welfare agency (CWA), using form PA-3L, Statement of Income Available for Medicaid Payment.

Medicaid recipients are entitled to a personal needs allowance (PNA) (see N.J.A.C. 10:63-1.10 below). The resident's PNA money is to be used solely for the resident.

The total cost of NF care paid during State Fiscal Year 1994 was one billion dollars, State and Federal share combined.

The proposed readoption provides no change in economic impact upon conventional nursing facility (NF) providers as there is no change in the cost accounting and rate evaluation (CARE) provisions at N.J.A.C. 10:63-3 which govern conventional facilities.

However, the special care NF (SCNF) provider will realize a negative fiscal impact as a result of the proposed rule in that the Division will no longer reimburse on the full actual cost, regardless of the efficiency of the facility. Based on the 1992 special care NF cost reports, simulations were run for each special care NF comparing their current per diem against their expected per diem when applying the proposed rate reimbursement methodology. The new methodology results in a reduction of the current Medicaid per diem for each one of the special care NFs. Based on the 1992 Special Care NF cost reports, simulations were run for each comparing their current per diem against their expected per diem when applying the proposed rate reimbursement methodology. Five of the existing SCNF programs will receive substantial rate reductions per patient per day, while the remaining 12 SCNFs will realize a reduction of less than $20.00 per day. This negative impact may be somewhat mitigated by a feature in the proposed methodology which provides a fiscal incentive based on a high New Jersey Medicaid occupancy percentage. In addition, the Division anticipates that the facilities will become more efficient, and will therefore reduce costs to the levels recognized in the rate setting system. This new rate methodology for SCNFs will become operative on January 1, 1995. The Division believes the rate methodology proposed will reimburse the costs that must be incurred by economical and efficient SCNF providers.

The Division estimates an annual savings of $9 million dollars (State and Federal combined) from this change.

Regulatory Flexibility Analysis

The proposed readoption with amendments has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules impose reporting, recordkeeping and other compliance requirements on NF's, some of whom may be small businesses under the terms of the Act. Therefore, a regulatory flexibility analysis is required. Providers are required to maintain sufficient records to indicate the name of the recipient to whom the service was rendered, date of service, nature of service, and other data (see N.J.S.A. 30:4D-12). Providers are also required to keep certain clinical data about the resident's condition and update their records whenever the resident's condition changes. Providers are also required to bill the Medicaid program in the manner prescribed in the Medicaid Billing Supplement. Due to the need to provide timely and cost-effective medical treatment to eligible individuals, the Division has determined that no differentiation based on business size can be made in the rules.

The Division does not believe there will be any capital costs associated with this proposal. The Division has attempted to reduce unnecessary paperwork by retaining the basic recordkeeping requirements associated with resident care.

While providers may be required to learn the fiscal agent billing system, there has been a longstanding requirement that NFs submit an initial claim to the N.J. Medicaid program for reimbursement and make any adjustments or corrections as necessary. The TAD is the billing document and the FD999 facilitates the provider's ability to make corrections.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:63.

Full text of the rules proposed for repeal may be found at N.J.A.C. 10:63-1.2, 2A, 4 and Appendix I.

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

SUBCHAPTER 1. GENERAL PROVISIONS

10:63-1.1 Scope

This chapter addresses the provision of quality, cost-prudent health care services available to New Jersey Medicaid eligible children and adults in a nursing facility (NF) and addresses the provision of and reimbursement for services required to meet the individual's medical, nursing, rehabilitative and psychosocial needs to attain and maintain the highest practicable mental and physical functional status. Although the scope of the Long-Term Care Services chapter encompasses other long-term care facilities such as governmental psychiatric hospitals, inpatient psychiatric services/programs for the under 21 (residential treatment centers) and intermediate care facilities/mentally retarded (ICF/MRs), the following subchapters specifically address nursing facility services. However, the Fiscal Agent Billing Supplement applies to all the above cited long-term care facilities.

10:63-1.2 Definitions

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

"Advance directive" means a written instruction relating to the provision of health care when the individual is incapacitated, such as a living will or durable power of attorney for health care.

"Air fluidized therapy bed" means a device employing the circulation of filtered air through ceramic spherules (small, round ceramic objects).

"Case management" means a process by which the Division of Medical Assistance and Health Services Medical Social Care Specialist monitors the provision of nursing facility care to assure timely and appropriate provider responses to changes in care needs and delivery of coordinated services.

"Case mix" means a system of staffing and reimbursement for nursing services based on variation in patient acuity and care needs that influences the type and amount of service needed.

"Clinical audits" means a method of utilization control under the enforcement authority of Section 1902(a)(30)(A) of the Social Security Act, in accordance with 42 CFR 456.1(b)(1), to monitor the utilization of and payment for nursing facility care and services reimbursable under the Medicaid State Plan.

"Comprehensive assessment" means a process conducted by each member of the interdisciplinary team which, for each resident, identifies problems; determines care needs; and in conjunction with the resident and his or her significant other or legal representative, results in an interdisciplinary plan of care.

"Consultant pharmacist" means a pharmacist licensed by the New Jersey State Board of Pharmacy who meets the qualifications in N.J.A.C. 10:51-3.3.

"Conventional nursing facility"—see nursing facility.

"Department of Health" (DOH) means the New Jersey State Department of Health.

"Division of Developmental Disabilities (DDD)" means the Division of Developmental Disabilities within the New Jersey State Department of Human Services.

"Division of Mental Health and Hospitals (DMH&H)" means the Division of Mental Health and Hospitals within the New Jersey State Department of Human Services.

"Health Services Delivery Plan (HSDP)" means an initial plan of care prepared by the Regional Staff Nurse during the Pre-Admission Screening (PAS) assessment process which reflects the

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individual's current or potential health problems and required care needs.

"Interdisciplinary care plan" means the care plan developed by the interdisciplinary team which includes measurable objectives and time tables to meet the resident's medical, nursing, dietary and psychosocial needs that are identified through the comprehensive assessment process.

"Interdisciplinary team" means a team consisting of a physician and a registered professional nurse and may also include other health professions relative to the provision of needed services. The interdisciplinary team performs comprehensive assessments and develops the interdisciplinary care plan.

"Low airloss therapy bed" means a bed frame that is equipped with air sacs which are grouped into zones corresponding to various body areas. The air sacs are inflated by a constant flow of air, some of which is directed through the air sacs to the patient surface.

"Medical director" means a physician licensed under New Jersey State law who is responsible for the direction and coordination of medical care in a nursing facility.

"Medical evaluation team (MET)" means a team of Medicaid professionals consisting of a physician consultant, a regional staff nurse (RSN), a regional pharmaceutical consultant, a Medical Social Care Specialist I (MSCS I) and a Medical Social Care Specialist II (MSCS II) who are assigned to the Medicaid District Office (MDO). A MET has the responsibility to review medical, nursing, and social information as well as any other supporting data in order to evaluate the need for long-term care, determine the level of care needed, the feasibility of alternate care, the quality of care given and the outcome of service. Members of the MET may review each recipient or potential recipient as individual team members or may perform the review as a multidisciplinary team.

"Medical social care specialist (MSCS)" means a social worker employed by the Division of Medical Assistance and Health Services who performs case management as required by N.J.A.C. 10:63.

"Medical staff" means one or more licensed physicians who act as the attending physician(s) to Medicaid recipients in a nursing facility.

"Minimum data set (MDS)" means a minimum set of screening and assessment elements, including common definitions and coding categories, needed to comprehensively assess an individual nursing facility resident. The items in the MDS standardize communication about resident problems and conditions within facilities, between facilities, and between facilities and outside agencies.

"Nursing facility (NF)" means an institution (or distinct part of an institution) certified by the New Jersey State Department of Health for participation in Title XIX Medicaid and primarily engaged in providing health-related care and services on a 24-hour basis to Medicaid recipients (children and adults) who, due to medical disorders, developmental disabilities and/or related cognitive and behavioral impairments, exhibit the need for medical, nursing, rehabilitative, and psychosocial management above the level of room and board. However, the nursing facility is not primarily for care and treatment of mental diseases which require continuous 24-hour supervision by qualified mental health professionals or the provision of parenting needs related to growth and development.

"Occupancy level" means the average number of Medicaid recipients and recipients receiving public assistance under P.L. 1947, c.156, as amended (C44.8-107 et seq.) residing in a NF multiplied by the number of days residing in a NF. This sum is then divided by the total number of licensed beds in the facility during the billing month.

"Occupational therapist" means a person who is registered by the American Occupational Therapy Association, 1383 Piccard Drive, P.O. Box 1725, Rockville, MD 20849-1725, or is a graduate of a program in occupational therapy approved by the Council of Medical Education of the American Medical Association, 515 N. State St., Chicago, IL 60610, and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association.

"Physical therapist" means a person who is a graduate of a program of physical therapy approved by both the Council on Medical Education of the American Medical Association, 515 N. State St., Chicago, IL 60610, and the American Physical Therapy Association, 1111 N. Fairfax St., Alexandria, VA 22314 or its equivalent; and if practicing in the State of New Jersey, is licensed by the State of New Jersey, or if treatment and/or services are provided in a state other than New Jersey, meets the requirements of that state, including licensure, if applicable, and also meets all applicable Federal requirements.

"Physician's services" means those services provided within the scope of medical practice as defined by the laws of New Jersey and those services which are performed by or under the direct personal supervision of the physician.

1. "Physician" means a doctor of medicine or osteopathy licensed to practice medicine and surgery by the New Jersey State Board of Medical Examiners.

2. "Direct personal supervision" means services which are rendered in the physician's presence.

"Pre-admission screening (PAS)" means that process by which all Medicaid eligible recipients seeking admission to a Medicaid certified NF and individuals who may become Medicaid eligible within six months following admission to a Medicaid certified NF receive a comprehensive needs assessment by the Regional Staff Nurse to determine their long-term care needs and the most appropriate setting for those needs to be met, pursuant to N.J.S.A. 30:4D-17.10. (P.L. 1988, c.97).

"Pre-admission screening and annual resident review (PASARR)" means that process by which all individuals with mental illness (MI) or mental retardation (MR) are screened prior to admission to a NF and annually thereafter in order to determine the individual's appropriateness for NF services, and whether the individual requires specialized services for his or her condition.

"Prior authorization" means approval granted by the Division of Medical Assistance and Health Services through the appropriate Medicaid District Office (MDO) for payment for NF or before other Medicaid covered services are rendered to a Medicaid recipient, in accordance with this chapter.

"Regional staff nurse (RSN)" means a registered professional nurse employed by the Division of Medical Assistance and Health Services who performs health needs assessments as required by this chapter.

"Rehabilitative and/or restorative nursing care" means nursing care provided by a registered professional nurse, or under the direction of a registered professional nurse, qualified by experience in rehabilitative or restorative nursing care.

"Rehabilitative services" means physical therapy, occupational therapy, speech-language pathology services, and the use of such supplies and equipment as are necessary in the provision of such services.

"Resident" means a Medicaid eligible or potentially eligible recipient residing in an NF.

"Respiratory care practitioner" means an individual credentialed by the State Board of Respiratory Care, to practice respiratory care under the direction or supervision of a physician pursuant to State of New Jersey P.L. 1971, c.60; P.L. 1974, c.46; and P.L. 1978, c.73, amended August 1991.

"Section Q" means the resident classification portion of the standardized resident assessment (SRA) instrument which identifies an individual NF resident's nursing service requirements based on the standards at N.J.A.C. 10:63-2.2(a).

"Skilled nursing facility (SNF)" means a free-standing institution or an identifiable part of an institution which meets all the State and Federal requirements for participation in the Medicare Program as a skilled nursing facility.

"Social services" means those services provided to meet the emotional and social needs of the Medicaid recipient and significant other or guardian at the time of admission, during treatment and care in the facility, and at the time of discharge.

"Special care nursing facility (SCNF)" means a NF or separate and distinct unit within a Medicaid certified conventional NF which has been approved by the Division of Medical Assistance and Health Services to provide care to New Jersey Medicaid recipients who

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require specialized health care services beyond the scope of conventional nursing facility services as defined in N.J.A.C. 10:63-2, Nursing Facility Services.

"Specialized services for mental illness (MI)" mean those services offered, in accordance with 42 CFR 483.120, when an individual is experiencing an acute episode of serious mental illness and psychiatric hospitalization is recommended, based on a Psychiatric Evaluation. Specialized Services include implementation of a continuous, aggressive, and individualized treatment plan by an interdisciplinary team of qualified and trained mental health personnel.

"Specialized services for mental retardation (MR)" mean those services offered, in accordance with 42 CFR 483.120, when an individual is determined to have skill deficits or other specialized training needs that necessitate the availability of trained MR personnel, 24 hours per day, to teach the individual functional skills. Specialized services are those services needed to address such skill deficits or specialized training needs.

"Speech-language pathologist" means a person who has a certificate of clinical competence from the American Speech and Hearing Association; meets all applicable Federal regulations; has completed the equivalent educational requirements and work experience necessary for the certificate, or has completed the academic program and is acquiring supervised work experience to qualify for the certificate, and, if practicing in the State of New Jersey is licensed by the State of New Jersey; or if treatment and/or services are provided in a state other than New Jersey, meets the requirements of that state, including licensure, if applicable.

"Standardized Resident Assessment (SRA)" means an instrument developed by the State to report minimum data set requirements, including resident assessment protocols and additional State mandated data, which results in a comprehensive, standardized assessment of a NF resident's functional capabilities and service requirements.

"Track of care" means the designation of the setting and scope of Medicaid services determined by the PAS process conducted by the RSN following assessment of the Medicaid eligible or potentially eligible Medicaid recipient, as follows:

1. "Track I" means long-term NF care.
2. "Track II" means short-term NF care.
3. "Track III" means long-term care services in a community setting.

"Waiting list" means the standardized listing, maintained in chronological order by the NF, of the names of all individuals seeking admission or readmission to a Medicaid participating NF.

10:63-1.3 Program participation

(a) A NF shall comply with the following requirements in order to participate in the New Jersey Medicaid program. A NF shall:

1. Be licensed by the New Jersey State Department of Health, in accordance with N.J.A.C. 8:39, if in-State;

2. Be certified by the New Jersey State Department of Health and, in the case of both Medicare and Medicaid, by the Health Care Financing Administration (HCFA), which assures that the NF meets the Federal requirements for participation in Medicaid and Medicare;

3. Be approved for participation as a NF provider by the New Jersey Medicaid program. This includes the filing of a New Jersey Medicaid Provider Application FD-20 (see Appendix A, incorporated herein by reference), the signing of a Provider Agreement MCNH-38 (see Appendix B, incorporated herein by reference), and submittal of the HCFA-1513, Ownership and Control Interest Disclosure Statement (see Appendix C, incorporated herein by reference). The agreement for participation in the New Jersey Medicaid program stipulates that a NF shall provide all NF services required by N.J.A.C. 10:63. Continued participation as a New Jersey Medicaid provider will be subject to recertification by the New Jersey Department of Health and compliance with all Federal and State laws, rules and regulations. Upon recertification by the Department of Health, each NF will receive notification from the Provider Enrollment Unit, Division of Medical Assistance and Health Services, informing the facility that their provider agreement is being continued.

4. File a completed Cost Study for Long-Term Care Facility form MCNH-1 (see Appendix D, incorporated herein by reference) with the New Jersey State Department of Health and the Division of Medical Assistance and Health Services. After the initial cost study is filed, the provider shall file an MCNH-1 annually.

5. In accordance with 42 CFR 483.12(d)(1)(i)(ii), not require residents or potential residents to waive their rights to Medicare or Medicaid; and not require oral or written assurance that residents or potential residents are not eligible for, or will not apply for Medicare or Medicaid benefits; and

6. Accept as payment in full for covered services, the amounts paid in accordance with Medicaid policy defined at N.J.A.C. 10:49-9.3(a)2.

10:63-1.4 Private pay

(a) NFs which are approved for participation as providers of service under the New Jersey Medicaid program shall be prohibited under Section 6(a) of P.L. 1985, c.303 from soliciting or accepting payment, any type of gift, money, contribution, donation or other consideration as a condition of admission or continued stay from a Medicaid recipient or his or her family.

(b) NFs which are providers of service under the New Jersey Medicaid program shall be prohibited under Section 6(b)(c) of P.L. 1985, c.303 from requiring private pay contracts from Medicaid qualified applicants as a condition for admission or continued stay.

1. The prohibitions in (a) and (b) above are applicable regardless of the Medicaid occupancy level in a facility. A violation may be a criminal act punishable as a crime of the third degree.

2. The exception to the above is private pay contracts entered into with life-care communities that are explicitly referenced as such within their Medicaid participation agreement.

(c) An individual may enter a NF on a private pay contract basis only if Medicaid eligibility has not been established and no application to the New Jersey Medicaid program has been made. A private pay contract shall become void as soon as Medicaid eligibility is established.

10:63-1.5 Occupancy level

(a) The NF occupancy level shall be calculated using the total of Medicaid recipients multiplied by the number of days residing in the NF plus the total of public assistance recipients (under N.J.S.A. 44:8-107) multiplied by the number of days residing in the NF. This sum equals the total days which is then divided by the total number of NF licensed beds during the actual billing month.

1. A Special Care Nursing Facility (SCNF) which is an identifiable unit within a conventional NF shall calculate its occupancy level separate and apart from the occupancy level of the conventional NF beds using the same formula as cited in (a) above.

2. The NF shall submit the completed Provider Certification Statement for Long Term Care (see Appendix E, incorporated herein by reference), to report the actual calculation of the occupancy level determination of the NF. In addition to the occupancy level determination, the Certification Statement is also used to certify that the billing information is accurate, complete and in accordance with the rules of the New Jersey Health Services Program (Medicaid). The Certification Statement shall be submitted with the monthly Turn Around Document (TAD) (as set forth in Appendix Q, incorporated herein by reference) to the fiscal agent. Billing documents will be returned if the Certification Statement is not completed, signed and attached.

3. The calculation of the occupancy level shall include eligible bed reserve days in the determination of the Medicaid occupancy level.

10:63-1.6 Termination of a NF provider agreement

(a) The Division shall terminate a NF's provider agreement if the Division:

1. Receives notice from the New Jersey State Department of Health or HCFA that the NF is no longer certified to provide NF services. In that case:

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i. The provider agreement shall be terminated 23 days from the survey date if the New Jersey State Department of Health or the Secretary of the Department of Health and Human Services find that deficiencies pose immediate jeopardy to residents' health and safety.

ii. If the deficiencies do not pose immediate jeopardy to the resident's health and safety, the provider agreement shall be terminated ninety days from the survey date.

iii. The termination of provider agreement shall be rescinded if, prior to the effective date of termination, the Division is notified by the New Jersey Department of Health or the Secretary of the Department of Health and Human Services that the deficiencies have been satisfactorily corrected and the NF is certified to provide NF services; and

2. Determines that other good cause for such termination exists as cited at N.J.A.C. 10:49-11 or as a result of a pattern of aberrancies reported in a Clinical Audit as defined at N.J.A.C. 10:63-1.6.

10:63-1.7 Administrative appeal of denial, termination or non-renewal of NF certification or Medicaid Provider Agreement

(a) Any NF whose certification or Medicaid Provider Agreement is denied, terminated or not renewed shall have the opportunity to request a full evidentiary hearing before an administrative law judge, in accordance with the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

1. In order to obtain a hearing, the NF shall submit, within 20 days from the date of the Division letter proposing termination, a written request to the Chief, Office of Legal and Regulatory Liaison, Division of Medical Assistance and Health Services, Mail Code #3, CN-712, Trenton, New Jersey, 08625-0712.

2. All hearings requested pursuant to this section shall be completed either before the effective date of the denial, termination or non-renewal, or within 120 days thereafter.

3. If the Division elects to provide a hearing after the effective date of denial, termination or non-renewal, the NF will be entitled to an informal reconsideration to be completed prior to the effective date of the denial, termination or non-renewal.

4. The informal reconsideration, if requested by the NF, will include the following:

i. Written notice by the Division to the NF outlining the findings upon which the denial, termination or non-renewal is based;

ii. Notice that the NF is allowed a reasonable opportunity to refute the findings in writing; and

iii. A written affirmation or reversal of the denial, termination or non-renewal.

(b) A (S)NF whose certification or Medicare/Medicaid provider agreement is denied, terminated or not renewed by HCFA, may request a hearing pursuant to 42 CFR 498.40 by submitting a written request to the Health Care Financing Administration, Division of Health Standards and Quality, Attn: Coordinator Hearing and Appeals, Federal Building Room 3821, 26 Federal Plaza, New York, New York 10278.

1. A final decision entered under the Medicare review procedures will be binding for purposes of Medicaid participation.

10:63-1.8 Admission, transfer and readmission; general

(a) Pursuant to P.L. 1988, c.97, a Medicaid participating NF shall not admit any individual who is Medicaid eligible or who may become Medicaid eligible within 180 days of admission to the facility, or an individual with mental illness (MI) or mental retardation (MR) subject to Pre-Admission Screening and Annual Resident Review (PASARR) requirements as defined at 42 CFR 483.102 regardless of payment source, unless that individual has been prescreened by the Medicaid District Office (MDO) registered professional nursing staff and determined appropriate for NF placement.

(b) A Medicaid eligible individual residing in a Medicaid participating NF who is transferred to an acute care hospital shall not require preadmission screening prior to returning to the same or another NF.

(c) A Medicaid eligible individual identified as MI residing in a Medicaid participating NF, who is admitted to a psychiatric unit for treatment, shall not be subject to PASARR requirements, prior to returning to the NF. However, if the resident's condition indicates a significant change in mental or behavioral status, the NF shall immediately secure an Annual Resident Review (ARR) as defined in N.J.A.C. 10:63-1.11(e).

(d) In cases of transfer of a NF resident with MI or MR to a hospital or another NF, the admitting NF is responsible for ensuring that copies of the resident's most recent PASARR resident assessment reports, SRA and current HSDP accompany the transferring resident.

(e) Payment will not be made by the New Jersey Medicaid program for NF services provided to private paying patients who have applied for Medicaid benefits unless they have been authorized to receive NF services by the MDO. (See N.J.A.C. 10:63-1.5).

(f) The NF shall obtain a statement of the Medicaid recipient's budgetary information on the PA-3L Statement of Income Available for Medicaid Payment (see Appendix F, incorporated herein by reference) from the appropriate CWA.

(g) Notification of the approval or denial of NF services by the MDO shall be provided to the applicant and other individuals and agencies, as required in N.J.A.C. 10:49-10.4.

(h) In the event that a NF admits a Medicaid eligible recipient or an individual who may become Medicaid eligible within 180 days of admission without preadmission screening by the MDO, the effective date of the initial authorization will be the date of the MDO assessment. Facilities admitting such individuals without preadmission screening shall not be reimbursed by the New Jersey Medicaid program for any care rendered before the MDO assessment.

(i) When an inpatient is to be discharged from the hospital to a NF, the transfer shall, to the extent possible, be to a Medicare/Medicaid participating (S)NF when Medicare (Title XVIII) benefits are available.

(j) When an inpatient is discharged from the hospital to a Medicaid certified NF, the NF shall be responsible for securing a legible abstract or summary prepared by either the attending physician or the hospital and signed by attending physician, covering the Medicaid recipient's care in the hospital. This information shall be forwarded to the NF along with the HSDP and MDO authorization and where applicable, PASARR-related material.

(k) The NF shall submit a Notification From Long-Term Care Facility of the Admission or Termination of a Medical Patient, MCNH-33 Form, (see Appendix G, incorporated herein by reference) along with a copy of the hospital transfer form or its equivalent PA-4 Form, Certification of Need for Patient Care in Facility other than Public or Private General Hospital (see Appendix H, incorporated herein by reference) to the MDO serving the county where the NF is located, within two working days of admission.

(l) When a resident is transferred to a hospital, there is no change in the policy for readmission to the NF or the termination from the NF (see N.J.A.C. 10:63-1.8(a)). The MCNH-33 form, shall be completed, dated and signed for each readmission and termination of a Medicaid recipient. The MCNH-33 form shall reflect the room number and bed number to which or from which the Medicaid patient has been transferred or readmitted.

10:63-1.9 Waiting list

(a) The NF shall establish a single waiting list, in chronological order, which shall be applied regardless of a NF's Medicaid occupancy level. The order of names shall be predicated upon the order in which the request of any individual (or family) to have his or her name added to the list is received. Hospitalized individuals ready for readmission to the NF are to be added to the top of the list as soon as the hospital notifies the NF of the contemplated discharge. As soon as a bed becomes available, it shall be filled from this waiting list. Provisions can be made for emergency, life-threatening situations or Life-Care community admissions.

1. The NF shall meet the following requirements:

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i. Maintain only one waiting list; this list shall reflect a roster updated daily, of all individuals who have applied for admission to the facility;

ii. Reflect in chronological order the full name and address of the individual applying by the date the application and/or the oral request for admission is made;

iii. Hold a vacant bed for a minimum period of 24-hours pending notification for the admission of the individual whose name appears first on the waiting list. Documentation of how the notification was given is required;

iv. If the individual on the waiting list is unable or does not qualify for admission within the 24-hour period, the vacant bed shall be offered to the next individual on the list under the same conditions.

v. If the individual whose name appears first on the waiting list is not admitted to the facility within the 24-hour period, that person's name shall remain on the waiting list in the same order previously held until admitted to the NF; and

vi. A file shall be maintained containing full documentation to support any valid reason why the individual whose name appears first on the waiting list is not admitted to the NF.

2. It shall be unlawful discrimination for any Medicaid participating NF to deny admission to a Medicaid eligible individual who has been authorized for NF services by the MDO when a NF bed becomes available in accord with the waiting list.

10:63-1.10 Involuntary transfer initiated by the facility

(a) The Division recognizes that there may be problems in relocating infirm aged persons from a NF. The purpose of this rule is to specify the circumstances in which the involuntary transfer of a Medicaid recipient in a NF is authorized and to establish conditions and procedures designed to minimize the risks, trauma and discomfort which may accompany the involuntary transfer of a Medicaid recipient from a NF.

(b) This rule shall be interpreted consistent with the Federal requirement that care and service under the Medicaid program be provided in a manner consistent with the best interests of the resident.

(c) This rule shall apply to the involuntary transfer of a Medicaid recipient at the request of a NF. This rule shall not apply to the Division's utilization review process, nor to the movement of a Medicaid recipient to another bed within the same facility.

(d) A transfer of a Medicaid recipient which was not consented to or requested by the recipient or by the recipient's family or authorized representative shall be considered an involuntary transfer. A Medicaid recipient is a Medicaid eligible individual residing in a NF which has a Medicaid provider agreement. This includes Medicaid recipients over the minimum number stipulated in the agreement or an individual who had entered the facility as non-Medicaid and is awaiting resolution of Medicaid eligibility.

(e) A Medicaid recipient shall only be involuntarily transferred when adequate alternative placement, acceptable to the Division, is available. A Medicaid recipient may be transferred involuntarily only for the following reasons:

1. The transfer is required by medical necessity;

2. The transfer is necessary to protect the physical welfare or safety of the recipient or other residents;

3. The transfer is required because the resident has failed, after reasonable and appropriate notice, to reimburse the NF for a stay in the facility from his/her available income as reported on the PA-3L; or

4. The transfer is required by the New Jersey State Department of Health pursuant to licensure action or to the facility's suspension or termination as a Medicaid provider by the Division.

(f) In any determination as to whether a transfer is authorized by this rule, the burden of proof, by a preponderance of the evidence, shall rest with the party requesting the transfer, who shall be required to appear at a hearing if one is requested and scheduled. Where a transfer is proposed, in addition to any other relevant factors, the following factors shall be taken into account:

1. The effect of relocation trauma on the recipient;

2. The proximity of the proposed placement to the present facility and to the family and friends of the recipient; and

3. The availability of necessary medical and social services as required by Federal and State rules and regulations.

(g) The procedure for involuntary transfer shall be as follows:

1. The NF shall submit to the Division a written notice with documentation of its intention to and reason for the involuntary transfer of a Medicaid recipient from the facility;

2. If the MDO determines that an involuntary transfer is appropriate, the recipient and/or the recipient's authorized representative shall be given 30 days prior written notice by the Division that a transfer is proposed by the NF and that such transfer will take effect upon completion of the relocation program specified in (h). The written notice to the recipient and/or authorized representative will advise of the right to a hearing. If the recipient requests a hearing within 30 days of the date of the written notice, the transfer is stayed pending the decision following the hearing. In those instances where the Division determines that an acute situation or emergency exists, the transfer shall take effect;

3. The Division will comply with the hearing time requirements in State and Federal rules and regulations, unless an adjournment is requested by the appellant;

4. The hearing shall be conducted at a time and place convenient to the recipient. Notification shall be sent to all parties concerned;

5. All hearings shall be conducted in accordance with the Fair Hearing procedures adopted by the Division.

(h) The relocation procedure shall be as follows:

1. In the event the relocation of a recipient is the final Division determination, the Division shall afford relocation counselling for all prospective transferees in order to reduce as much as possible the impact of transfer trauma.

2. The staff of the transferring and receiving NFs shall assist in the transfer process, although responsibility and authority for the coordination and transfer rests with the Division and will include:

i. Evaluation and review by appropriate MDO staff;

ii. Initial recipient, family or authorized representative counseling;

iii. Involvement of the recipient, family or authorized representative in the placement process with recognition of their choices;

iv. Recipient preparation and site visit for all able to do so within the capability of the transferring agent;

v. Accompaniment on the transfer day by a family member, authorized representative or attendant, unless the recipient otherwise requests;

vi. Follow-up counseling at the new location; and

vii. No right to an administrative hearing on a claim for failure to implement the requirements of this subsection for relocation counseling.

(i) No owner, administrator or employee of a NF shall attempt to have recipients seek relocation by harassment or threats. Such action by or on behalf of the NF may be cause for the curtailment of future admission of Medicaid recipients to the NF or for termination of the Medicaid Provider Agreement with the NF, depending upon the nature of the action.

(j) Any complaints regarding the handling of recipients relative to their transfer shall be referred to the Division for investigation and corrective action.

10:63-1.11 NF authorization process

(a) A Medicaid participating NF shall obtain authorization from the MDO prior to the admission of a Medicaid eligible or potentially Medicaid eligible individual. A Notification from Long Term Care Facility of Admission or Termination of a Medicaid Patient, form MCNH-33, shall be forwarded to the MDO serving the county where the NF is located, within two working days of admission or termination.

1. Pre-Admission Screening and Annual Resident Review (PASARR) shall be required for all individuals with mental illness (MI) or mental retardation (MR) who apply to, or reside in, Medicaid Certified NFs regardless of payment sources.

(b) The Medicaid RSN shall review the medical, nursing and social information obtained at the time of assessment, as well as

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any other supporting data to assess the individual's care needs and determine the appropriate setting for the delivery of needed services. The RSN will authorize or deny NF placement based on the service requirements of N.J.A.C. 10:63-2, and the feasibility of alternative placement and will designate the track of care.

1. For each NF applicant with MI or MR who is determined by the RSN to require NF placement, the State mental health or mental retardation authority (as appropriate) will determine whether the individual requires specialized services for MI or MR, prior to issuance of the NF placement approval.

i. For the MI diagnosed individual, the RSN will request that the Psychiatric Evaluation form (see Appendix I, incorporated herein by reference), provided by the mental health authority, be completed by a Board eligible/certified psychiatrist and forwarded to the Division of Mental Health and Hospitals for determination of need for specialized services.

ii. For the MR diagnosed individual, the MDO will contact the appropriate Division of Developmental Disabilities staff to complete the determination for specialized services. In the case of an individual dually diagnosed with MI and MR, the determination by the mental health authority is completed first.

iii. The results of the MI or MR determinations will be forwarded to the MDO and will be conveyed to the referring individual. If no specialized services are required, the NF approval letter will accompany the MI/MR agency report.

iv. Individuals having Alzheimer's Disease or related organic dementia as described in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, Revised 1987 (DSM-III-R), shall be identified and the clinical records shall contain documentation which supports the diagnosis.

v. In the event the individual is determined by the State MI or MR authority to require specialized services, NF placement is inappropriate. The MI or MR authority will assist in finding appropriate placement/services for the individual.

vi. If the NF placement is denied based on failure to meet the NF requirements of N.J.A.C. 10:63-2, further screening by the State MI or MR authority is not required.

(c) As part of the PAS determination, the RSN will assign the track of care based on the following criteria:

1. Track I designates long-term NF care and shall be assigned in situations when long-term placement is required because clinical prognosis is poor, and when, during the assessment process, short-term stays are neither realistic nor predictable. Individuals designated for Track I services shall, at a minimum, require nursing services as required by N.J.A.C. 10:63-2.

i. A Track I designation shall not preclude the possibility of future discharge. The Medicaid Social Care Specialist will monitor those individuals with discharge potential and consult with the RSN who will reassess the individual and update the Health Services Delivery Plan (HSDP) for a track change if appropriate.

2. Track II designates short-term NF care and shall be assigned in those situations when comprehensive and coordinated NF services are required to stabilize medical conditions, promote rehabilitation, or restore maximum functioning levels and to provide a therapeutic setting which assures family counseling and teaching in preparation for discharge to the community setting.

i. Individuals designated for Track II services shall, at a minimum, require nursing services as defined by N.J.A.C. 10:63-2.

ii. Individuals shall also be assigned to short-term NF stays, in spite of technically complex care needs and guarded prognosis, particularly when the individual is motivated towards NF alternatives and/or when caregivers, through case management intervention, may obtain services which make return to the community a viable option.

3. Track III designates long-term care services in the community and shall be assigned in the case of:

i. Individuals who meet the requirements of N.J.A.C. 10:63-2, but can be appropriately cared for in the community with supportive health care services. These individuals may be eligible for Medicaid State Plan services or Home and Community-based Services Waiver Programs.

ii. Individuals who may not require NF services as defined by N.J.A.C. 10:63-2, but would appropriately benefit from a structured therapeutic care setting such as can be provided in a Residential Health Care Facility, a group or boarding home, or other similar facility.

(d) The following procedures are to be utilized by the referent when seeking authorization through PAS prior to the admission of an individual to a Medicaid participating NF.

1. PAS procedure from a hospital setting: The hospital discharge planner/social work staff shall be responsible for identifying a potentially Medicaid eligible individual, a Medicaid eligible individual or an individual subject to PASARR requirements who may be at risk of NF placement on the basis of the "At-Risk Criteria for Nursing facility Placement Referral to the Medicaid Office for PAS Evaluation" (see Appendix J, incorporated herein by reference). These individuals shall be referred by the hospital to the MDO for assessment by the Medicaid RSN and, if appropriate, the county welfare agency (CWA) for eligibility determination.

i. NF approval: The RSN will conduct a PAS assessment utilizing the PAS-1 (see Appendix K, incorporated herein by reference) assessment instrument, and will verbally advise the hospital discharge planner/social worker and patient/family of the assessment decision and, if appropriate, will advise that an evaluation for PAS MI/MR specialized services is required. For a non-PAS MI/MR individual, the RSN will leave a copy of the Health Service Delivery Plan (HSDP) (see Appendix L, incorporated herein by reference), which identifies the individual's current and potential health problems and required care needs, and signed PAS-7 approval letter (see Appendix M, incorporated herein by reference), with the discharge planner/social worker. The original approval letter, signed by the RSN, will be sent by the MDO to the individual/family with copies to the CWA. For PAS MI/MR individuals, the signed approval letter will only be forwarded to the individual/family, with a copy to the referent, after the determination has been made that no specialized services are required.

(1) A copy of the HSDP, approval letter and, in appropriate cases, the MI/MR evaluation and determination or documentation which supports the diagnosis of Alzheimer's Disease or related organic dementia will be attached to the hospital discharge material and forwarded with the individual to the admitting NF.

(2) If the individual being transferred will be eligible for Medicare benefits, the transfer shall, to the extent possible, be made to a Medicare participating (S)NF.

ii. In the case of a NF denial, the RSN will verbally advise the hospital discharge planner/social worker and the individual and/or the individual's family of the assessment decision. The RSN will leave a signed copy of the PAS-8 denial letter (see Appendix N, incorporated herein by reference) with the discharge planner/social worker. The assessment decision may also result in a denial of any other long-term care services covered by the Medicaid program. The original denial letter, signed by the RSN, will be sent to the patient/family by the MDO, with copies to the CWA.

2. Individuals potentially eligible for Medicaid who are currently residing in a Medicaid participating NF who did not meet PASARR criteria for MI/MR individuals prior to admission, and who may become eligible for Medicaid within six months, shall be referred by the NF to the MDO for a PAS evaluation via the MCNH-33 and PA-4 forms, utilizing the "At Risk Criteria for Nursing Facility Placement Referral To The Medicaid Office For PAS Evaluation."

i. If the RSN approves NF placement of a potentially eligible individual, a copy of the HSDP and approval letter will be given to the NF designate for attachment to the clinical record.

(1) The CWA will forward the MCNH-33 Form (Notification from Long-Term Care Facility of Admission or Termination of Medicaid Patient) to the MDO indicating a change in the individual's status from private pay to Medicaid status.

ii. If a potentially eligible individual is denied NF, a denial letter will be issued to the NF designate by the MDO.

(1) If the MDO receives a subsequent referral for NF approval for a previously denied individual, the RSN shall review the present-

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ing evidence to ensure that a significant change in the individual's condition has occurred.

3. Individuals residing in the community who are Medicaid-eligible recipients or who may become eligible for Medicaid within six months of admission, or an individual subject to PASARR requirements as defined at 42 CFR 483.102, seeking admission to a Medicaid participating NF shall be referred to the MDO for preadmission screening and, if appropriate, to the CWA for eligibility determination.

i. Upon receipt of a PA-4 Form (Certification of Need for Patient Care in Facility Other than Public or Private General Hospital) or physician statement which substantiates diagnosis and describes the individual's care needs, the Medicaid RSN will conduct a PAS assessment in accordance with (b) above. The individual will receive notification from the MDO, in writing, of approval or denial of NF. Copies of the letter will be sent by the MDO to the CWA. For individuals residing in the community who meet the PASARR/MI criteria, the attending physician may complete the Psychiatric Evaluation form, in the event that a board-eligible/certified psychiatrist is not available.

ii. If NF placement is approved, the Medicaid social worker shall assist the individual and/or family in selecting an appropriate NF.

(e) The procedure for NF continued stay shall be as follows:

1. The NF shall assess all individuals following admission, and periodically thereafter, utilizing the SRA in order to classify nursing service needs based on requirements contained in N.J.A.C. 10:63-2, and shall determine continued need for NF services, as follows:

i. Individuals currently residing in NFs who meet the PASARR criteria for MI or MR as defined under 42 CFR 483.102 will be evaluated through the Annual Resident Review (ARR) process, which mandates that a review and determination of need for specialized services be completed by the State MI/MR authority (DMH&H/DDD) not less often than annually (42 CFR 483.114).

(1) A PASARR Reassessment list, identifying those individuals subject to review by DMH&H and/or DDD, will be forwarded by the MDO to the NF. The NF shall update the NF PASARR Reassessment list to reflect deaths, transfers, discharges or changes in status affecting the criteria for PASARR requirements.

ii. For individuals with mental illness, the NF shall ensure that the attending physician completes the Psychiatric Evaluation form, provided by the DMH&H, within the identified time frame and forwards that evaluation to DMH&H. The NF shall maintain a copy of the psychiatric evaluation on the individual's clinical record. The NF is not required to repeat the supporting diagnostic evaluation on individuals with Alzheimer's Disease or related organic dementias, providing that the initial documentation is maintained on the individual's current NF clinical record. The psychiatric evaluation performed by the attending physician will be reviewed by a DMH&H psychiatrist to determine specialized service needs. If the individual is found to require specialized service, the DMH&H will contact the NF regarding treatment options.

iii. For individuals with mental retardation, staff from the Division of Developmental Disabilities (DDD) will visit NFs to perform MR evaluations. The MR evaluation process will include observation and/or interviews of each MR individual.

iv. Individuals who are identified on the NF PASARR Reassessment list but are hospitalized or on therapeutic leave, shall have the annual review completed by the NF following readmission to the NF.

2. The Medicaid RSN shall periodically assess Medicaid recipients, review the NF's assessments, patient classifications, and case mix reporting, and may recommend alternatives to NF stay or deny continued stay.

(f) Medical Social Care Specialists employed by the Division shall provide case management to Medicaid recipients, on an ongoing basis, following placement to monitor the provision of NF care in order to:

1. Assure that services are rendered as recommended by the HSDP and in accordance with the NF's evaluation of the individuals health service needs;

2. Assure the delivery of timely and coordinated services;

3. Provide direct or secure needed consultations with Medicaid professional or NF staff to promote service provision which is coordinated, effective and cost prudent; and

4. Facilitate discharge planning and promote appropriate placement to alternate care settings.

(g) Alternative care and discharge planning shall be conducted as follows:

1. Alternative care planning is the determination, initially and periodically, as to whether or not each Medicaid recipient requires initial placement or continued placement in an institutional setting and whether or not each recipient's nursing, social and other health care needs can be met through alternative institutional or non-institutional services.

i. The RSN will authorize initial NF services after consideration and rejection of possible means of alternate care. Similarly, the possibility of alternate means of care will be a prime consideration in every reassessment of the care required by the individual.

ii. The MDO staff will examine resident records for proof of continued vigilance and effort by the facility to utilize alternative means of care for all long-term residents.

(1) Recipients designated as track II (short-term) shall be monitored closely by MDO professional staff to assure active participation by the facility in the discharge planning process.

iii. If alternative care is available, accessible, and appropriate to the needs of the individual, the RSN shall deny the request for NF services.

iv. If an appropriate alternative plan of care becomes available and accessible for a person already approved for NF care who is awaiting placement, the RSN shall rescind the authorization for NF services.

v. Special Care NF (SCNF) residents who continue to require long-term supportive and restorative nursing services and therapeutic treatment for continued maintenance, in the absence of significant clinical change or special service needs, shall be approved for conventional NF placement (adult or pediatric) by the RSN after consideration and rejection of all possible means of alternate care.

(h) The NF shall notify the MDO, via the MCNH-33 Form, of all instances involving the termination of nursing facility services, which include but are not limited to, discharge, death, transfer and ineligibility.

(i) Authorization of out-of-State placement shall include the following additional conditions:

1. Authorization of out-of-State long-term care shall be prior authorized by the Division and shall be considered only when a required long-term care service is not available in New Jersey.

2. The out-of-State facility shall be licensed as a (S)NF by that state and the rate of reimbursement shall not exceed that authorized by the Title XIX program in the state in which the facility is located, or the reimbursement rate authorized by the New Jersey Health Services Program, whichever is lower.

3. Requests for prior authorization of out-of-State placement shall be accompanied by sufficient evidence of medical necessity to substantiate the request. The Division will review the records provided to determine the need for long-term care services and to determine the appropriateness of placing the recipient in a NF in New Jersey. The request shall be submitted to:

Department of Human Services
Division of Medical Assistance and Health Services
Office of Medical Care Administration
Mail Code #8, CN 712
Trenton, New Jersey 08625-0712

4. Prior to submitting a request for out-of-State placement, the recipient shall comply with the requirements of the pre-admission screening as defined in this subchapter.

10:63-1.12 Clinical audit

(a) Clinical audit is a method of utilization control under the enforcement authority of Section 1902(a)(30)(A) of the Social Security Act, to monitor the continued utilization of and payment for NF care and services reimbursable under the Medicaid program. Clinical audit has as its major component verification of NF services provision.

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(b) Professional staff from the Medicaid District Office (MDO) shall periodically conduct a post payment review of New Jersey Medicaid recipients for whom NF services have been provided. The review shall principally involve assessment of the Medicaid recipient's care needs and evaluation of treatment outcomes, based on direct observation of the recipient and examination of clinical and related records. The focus of the review shall be on the following areas:

1. Comparative analysis of NF claim reporting to recipient's identified care needs;

2. Appropriate utilization and provision of required services; amd

3. Effectiveness and quality of provided services.

(c) Enforcement action will be taken by the Division as follows:

1. As a result of the clinical audits, aberrations in the reporting and/or provision of services and failure to comply with the requirements of this chapter shall be documented and reported to the NF for corrective action.

2. If a pattern of practice of significant proportion is documented wherein the NF has provided items or services at a frequency or amount determined unnecessary, or of a quality that does not meet the standards outlined in this chapter, this will result in an increase, reduction or termination of services, and ultimate restriction of the NF participation in the Medicaid Program.

10:63-1.13 Clinical and related records

(a) An individual clinical record shall be maintained for each Medicaid recipient covering his or her medical, nursing, social and related care in accordance with accepted professional standards and licensing standards as set forth by the Department of Health Long Term Care Facilities Licensing Standards, N.J.A.C. 8:39. All entries on the clinical record shall be current, dated and signed by the appropriate staff member and readily available at the appropriate nurses' station for review by DMAHS staff.

(b) The clinical record of a deceased resident shall be properly completed. It shall include:

1. Written reports of visits made by the physician during the critical stage of illness;

2. Written documentation of death pronouncement completed by the qualified health professional as specified by the NF's policies and procedures;

3. Complete nurse's notes containing all necessary and pertinent information documenting the resident's condition during the illness and apparent demise, notification of physician and next of kin;

4. Autopsy records where appropriate; and

5. A written record of the disposition of the body of the deceased individual.

(c) All clinical records of discharged residents shall be completed promptly and shall be filed and retained for the duration required by N.J.S.A. 26:8-5.

(d) If the resident is transferred to or from another health care facility a copy of the resident clinical record or an abstract thereof, including the most recent HSDP, SRA and current copy of PASARR Specialized Service review for MI/MR individuals or the documentation which supports the diagnosis for individuals with Alzheimer's disease or related organic dementia, shall accompany the resident.

(e) All information contained in the clinical record shall be treated as confidential and shall be disclosed only to authorized persons.

(f) If the NF does not have a full or part-time medical records librarian, an employee of the facility shall be assigned the responsibility for assuring that records are maintained, completed and preserved in accordance with accepted procedures. The designated individual shall be trained by, and must receive regular consultation from, a medical records librarian who is under written contract with the facility.

(g) Billing and financial records rules are as follows:

1. The Fiscal Agent Billing Supplement identifies the procedures required for the general use of the billing transaction forms and computer generated forms. All appropriate reports shall be retained until audited by the Division.

2. The facility shall establish and maintain appropriate and accurate records and accounts of all receipts and disbursements of Medicaid recipient funds, which shall be subject to review and fiscal audit by the State of New Jersey as may be required. A recipient shall be credited with the maximum amount of personal needs allowance funds authorized by Federal or State law for each month that such records or accounts are unavailable.

3. Any and all financial and other records relating to recipient's personal needs allowance accounts, income, cost studies, and billings to the Medicaid program shall be maintained and retained in accordance with professional standards and practices for the longest of the following periods of time:

i. At least one year after the resolution of audit findings or the conclusion of recovery proceedings arising out of those audit findings (whichever is later) for the records that are audited;

ii. One year after the conclusion of all hearings, appeals and/or other litigation with respect to audits of such records; or

iii. Seven years.

4. The records described in (g)3 above shall be made available for audit upon the request of appropriate State and/or Federal personnel or their agents.

5. Claims for NF services that are older than 12 months will be rejected.

i. A claim for payment for services shall be received by the fiscal agent no later that one year after the "from date of service" on the claim form (TAD). An adjustment request FD999 (see Appendix Q) for a paid claim shall be honored for a period of six months from the original date of payment;

ii. For purposes of this time limitation, a claim is the submission of a TAD, provided by the fiscal agent for the New Jersey Medicaid program, indicating a request for reimbursement for authorized NF services provided to an eligible recipient and which has been returned to the fiscal agent within the time limit specified. An adjustment form (FD999) or an MCNH-33 shall not constitute a claim for payment;

iii. Other timely filing information is located in the Administrative chapter at N.J.A.C. 10:49-7.2, "Timeliness of claim submission and inquiry".

10:63-1.14 Absence from facility due to hospital admission or therapeutic leave; bed reserve

(a) The bed reserve policy for hospital admission is as follows:

1. The NF shall reserve and hold the same room and the same bed of the Medicaid recipient transferred to a general or psychiatric hospital for a period not to exceed 10 days. The NF shall determine the individual's status or whereabouts during or after the 10 day bed reserve period.

i. If the resident is not readmitted to the same room or the same bed or the same NF during a bed reserve period, the NF requesting bed reserve reimbursement shall record on the resident's chart and make available for Division review, a justification for the action taken. Pending outcome of the Division's review, the facility may be subject to forfeiture of bed reserve reimbursement.

ii. Said reserved bed shall remain empty and shall not be occupied by another individual during the bed reserve period.

2. Reimbursement, not to exceed 10 days, shall be at the rate the NF received prior to the transfer to the hospital.

i. The recipient's available monthly income shall be applied against the per diem cost of care.

3. If readmission to the NF does not occur until after the 10 day bed reserve period, the next available bed shall be given to the Medicaid recipient. The recipient's name shall be placed on the chronological listing of persons waiting admission/readmission to the NF, and the recipient waiting for readmission shall have priority for the next available bed in the facility.

4. The bed reserve policy applies to any person in the NF eligible to receive Medicaid benefits; for example, a Medicare/Medicaid recipient who, at the time of transfer to the hospital, might be eligible for long-term care services under Medicare benefits.

5. Admission procedures (see N.J.A.C. 10:63-1.8) shall be followed when the Medicaid recipient has been readmitted following a period of hospitalization.

(b) Requirements concerning absence due to therapeutic leave are as follows:

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1. The Medicaid program will reimburse NFs their per diem rate for reserving beds for Medicaid recipients who are absent from the facility on therapeutic leave up to a maximum of 24 days annually. For this purpose, annually is defined as a calendar year beginning on January 1 and ending on December 31. Further, no portion of unused leave days may be carried over into the next calendar year. The facility shall maintain accurate leave day records on the Medicaid recipient's chart, for review by the Division.

2. A therapeutic leave shall include therapeutic or rehabilitative home and community visits with relatives and friends. Home visits shall be limited to therapeutic home visits only and shall not include hospital visits.

3. The absence of a Medicaid recipient from the facility for the purpose of therapeutic leave shall be authorized in writing by the recipient's attending physician and shall be included in the recipient's plan of care.

4. In those instances where a recipient is in more than one NF within a calendar year, the receiving facility shall determine the number of therapeutic leave days that have been allowed for payment by the sending facility within the same calendar year. A record of any leave days shall be a part of the information provided on the Patient Information Transfer Form.

5. The facility shall reserve and hold the same room and bed for the Medicaid recipient on a therapeutic home visit. Said bed shall not be occupied by another individual during the period of time in which the Medicaid recipient is on such leave.

6. Where a recipient's condition or situation requires more than 24 therapeutic leave days annually, as determined by the recipient's attending physician, prior authorization for the additional days shall be obtained from the MDO. The request for prior authorization shall be submitted in writing to the MDO Director, over the signature of the attending physician. A facility shall be reimbursed its per diem rate for reserving a bed for a Medicaid recipient for any additional days so authorized.

10:63-1.15 Complaints

(a) The Division will receive, document and investigate complaints from multiple sources and take appropriate corrective action as required. It is the Division's policy that the source of the complaint be held confidential, unless disclosure permission is obtained from the complainant.

(b) In addition to investigation by the Division, when complaints against a facility indicate the facility's failure to correct previously reported survey deficiencies or to comply with established licensure and Medicare/Medicaid certification standards, such complaint reports will be forwarded to the New Jersey State Department of Health and the Office of the Ombudsman for the Institutionalized Elderly for review and action. Any complaints or reports received by the Division indicating legal violations will be referred to the office of the Attorney General for review and action, as required.

10:63-1.16 Utilization of resident's income for cost of care in the NF and for PNA

(a) After provision for the resident's Personal Needs Allowance (PNA) is met, and then after provision for other allocations such as maintenance of spouse and/or dependent's home are satisfied, the remainder of the Medicaid recipient's income shall be applied to the cost of care in the NF, which includes per diem, bed reserve and other allowable expenses.

1. The amount of income which shall be collected by the NF from the recipient, recipient's family or Representative Payee (if any) will be established in the process of determining eligibility and identified by form PA-3L, Statement of Income Available for Medicaid Payment, issued by the CWA. The NF shall collect all of the recipient's income to offset the Medicaid payment.

2. The NF shall notify the CWA immediately whenever there is a change/difference in any income source, as well as when any additional assets or resources come to the attention of the NF.

3. The New Jersey Medicaid program encourages families or any other concerned individual(s) to make voluntary monetary contributions to the State of New Jersey on behalf of Medicaid recipients. Inquiries should be directed to the Division of Medical Assistance and Health Services, Bureau of Administrative Control, Mail Code #6, CN-712, Trenton, New Jersey 08625-0712.

(b) For all institutionalized aged, blind, and disabled individuals who are eligible for Medicaid, a designated amount of income as determined by State law (N.J.S.A 30:4D-6a) shall be protected for personal needs allowance.

1. Certain individuals in a NF have no income, or insufficient income to provide a maximum amount of PNA. For those individuals not already deemed eligible for SSI, the facility shall insure that the application for SSI benefits has been made. PA-3L's for those recipients who only receive an SSI check can be obtained from the Bureau of Claims and Accounts, CN 712, Trenton, New Jersey 08625-0712.

(c) Each Medicaid recipient residing in a NF shall be permitted to accumulate a sum of money from the PNA which, when combined with other resources retained by or for the person, does not exceed the maximum resource standard in N.J.A.C. 10:71-4.5.

1. If the NF is handling the PNA, the facility shall closely monitor the PNA account and inform the recipient and/or his or her representative when the amount comes within $200.00 of the resource eligibility cap. If the PNA is in excess of the resource standard defined in N.J.A.C. 10:71-4.5, the recipient and/or his or her representative shall be advised of his or her right to reduce the excess monies and that the recipient may be terminated from Medicaid coverage, unless the amount in excess of the resource standard is expended.

2. The recipient may choose to reduce excess PNA by applying some of the accumulated PNA toward past expenditures paid for his or her care by the Medicaid program. Checks payable to the "Treasurer, State of New Jersey", may be directed to the Chief, Bureau of Administrative Control, Division of Medical Assistance and Health Services, Mail Code #6, CN-712, Trenton, N.J. 08625-0712.

(d) Standards for management of PNA shall comply with Federal regulations at 42 CFR 483.10(c) and State licensing requirements at N.J.A.C. 8:39-4.1.

(e) The personal needs allowance (PNA) shall be used as follows:

1. The PNA is intended to meet the personal and incidental needs of a recipient residing in a NF, in keeping with his or her wishes. The PNA is not intended to be applied against outstanding balances for the cost of care.

2. The NF shall not charge for items the recipient has not requested, nor for any items about which the recipient has not been informed in advance that he or she will be billed.

3. NF's shall not charge for any item or service reimbursable under the Medicaid program. A facility may charge the difference between the cost of the brand a recipient requests and the cost of the brand generally provided by the facility, if the facility chooses to provide the requested brand. NFs shall not require the purchase of non-covered items as a condition for admission.

4. The basic items that NFs shall make available for recipient use under the Medicaid program include:

i. Personal hygiene item such as soap, facial tissues, towels, washcloths, shaving materials (lotion, razor, razor blades), combs, hair brushes, shampoo, tooth brushes, tooth paste, laundry services, denture cleaner and adhesive, dental floss, deodorant, incontinent supplies, sanitary napkins, disinfecting soaps or specialized cleaning agents, when medically indicated to treat special skin problems or to fight infections;

ii. Durable medical equipment such as wheelchairs, gerichairs, crutches, canes, walkers, commodes, Hoyer lifts, mattresses, hearing aids, dentures, glasses;

iii. Services, including electricity, TV antenna or cable hook-up when needed for acceptable reception, banking charges that are not deducted from the interest; and

iv. Basic room furnishings, such as chairs, table, fans, bedspreads, curtains.

5. NFs may not charge mark-ups for services. The facility may not mandate TV rental.

6. Examples of personal items for which PNA is intended are:

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i. Small purchases, such as cosmetics, electric shavers, hair spray, special lotions or powders, clothes brushes, tobacco or candy;

ii. Personal items, such as clothing, jewelry, watches, accessories, haircuts, beauty parlor services, newspapers or magazines;

iii. Personalization of living area with items requested by the resident, such as bed-spread, rug, pictures, furniture, radio or TV;

iv. Community contacts, such as home visits, transportation, trips to special events or places of interest, telephone calls, stationery, stamps or gifts;

v. Hobbies, such as games, photographic materials, aquariums, plants or audio or video tapes.

7. The PNA may be used to continue a bed reserve, if a recipient transferred to a hospital is unable to return within the 10-day bed reserve period. Payment shall be strictly voluntary, however, and shall be permitted only when the recipient's right to return to the NF (see N.J.A.C. 10:63-1.8) has been fully explained to the recipient and his representative. The recipient's request to use the PNA for this purpose shall be in writing. Under no circumstances shall the facility use overt or implicit coercion in this matter.

(f) A uniform accounting system shall be maintained by the facility as follows:

1. In compliance with Federal and State rules and regulations the NF sahll accept fiduciary responsibilities for a Medicaid recipient's PNA if the recipient and/or authorized representative requests that his or her PNA be managed by the facility. The NF shall establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each recipient's personal funds entrusted to the facility on the recipient's behalf. In compliance with Federal and State rules and regulations, the facility shall deposit any resident's personal funds in excess of $50.00 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts. The facility shall credit all interest earned on the resident's account to his or her account.

2. The PNA account and related supporting information, such as receipts, canceled check, bank statement, check register shall be maintained at the facility. The Division recommends that a direct deposit system be utilized.

3. A general ledger control account shall be established to record the total amount of PNA held in escrow by the facility.

4. A subsidiary ledger shall be established whereby each recipient's deposits and disbursements are recorded and the total of the recipient's balances reconciled to the general ledger control account each month, or as last reported by the banking facility.

5. When recording the recipient's income in a cash receipts journal, the PNA shall be segregated from the available income applied to the cost of the recipient's care. Within five days of receipt, the PNA shall be deposited directly into the interest bearing checking or savings account restricted for PNA. The general ledger control account shall reflect a credit posting to indicate the total PNA received during the month. Each recipient's subsidiary ledger account shall also be posted to record the deposits to the appropriate account.

6. To facilitate the recipient's access to the PNA, a portion of the total cash may be transferred periodically from the segregated checking/savings account to a petty cash fund. Such petty cash fund shall be maintained as an imprest fund. The amount of the imprest fund shall be reasonable and necessary for the size of the facility and needs of the recipients.

7. In compliance with Federal and State rules and regulations, the facility shall provide, at least quarterly, to the recipient and/or his or her authorized representative, an accounting of all transactions with regard to the PNA account. The amount of balance in the recipient's account shall be available for the recipient and/or his or her authorized representative on request.

8. Management of funds shall be as follows:

i. For recipients who are able to manage their funds, a family member must have authorization in writing from the recipient for a specific amount before funds are disbursed from the PNA.

ii. Recipients who are unable to manage their funds should have representative payees appointed.

iii. Family members should withdraw funds only on presentation of receipts showing items purchased for the recipient, unless this appears to be a financial hardship for the family member.

iv. In cases where there is an outside representative payee, and the recipient appears to be denied access to his PNA funds, or personal items are not being purchased for him, the facility shall take steps to ensure that the recipient's right to his PNA benefits is restored. Such steps may include warning letters to the representative payee, use of the NF attorney, and/or referrals to the Office of the Ombudsman for the Institutionalized Elderly and the Social Security Administration. In such cases, the facility may wish to request representative payeeship.

9. When drawing checks or cash to make disbursements from the recipient's PNA account, either an original invoice or a signed receipt from the recipient or an authorized representative shall be retained by the facility and referenced to the recipient's account. The receipt must stipulate the use of the funds or specify the items purchased.

10. When the facility draws checks on behalf of a recipient or reimburses the petty cash fund, disbursements of PNA shall be segregated from the operating expenses of the facility. At the end of each month, the general ledger control account shall be charged for the total PNA disbursed and each recipient's subsidiary ledger account sahll reflect the monthly disbursements on that recipient's behalf.

11. Accumulated interest is the property of the recipient. Although a recipient's PNA may not be used for banking service charges, interest from the account may be used for this purpose.

12. Upon discharge or transfer to another NF or other place of residence, the facility shall provide the recipient with a final accounting statement and a check in the amount of the recipient's close-out balance within seven working days of the transfer; however, a recipient transferred to another NF shall be given the option of authorizing the sending facility in writing to transfer any balance to the recipient's account at the receiving facility. The transfer of a PNA account from one facility to another shall be documented in writing, with a copy given to the recipient and/or his or her authorized representative. A recipient discharged or transferred shall have the right to the return of his or her personal property, such as, television, radio or other items.

13. Unclaimed PNA funds left behind by a discharged recipient who cannot be located or where the authorized representative cannot be located, shall be forwarded within 30 days to the Bureau of Administrative Control, Mail Code #6, CN 712, Trenton, New Jersey 08625-0712.

14. Within 10 days after the death of a Medicaid recipient, whether death occurred in the NF, in a hospital, during a period of therapeutic leave, the NF shall send a written notice regarding the existence of PNA funds both to the CWA and the individual identified by the recipient as the person to contact. A NF shall exercise all reasonable efforts to locate and notify any family, representative payee or interested person acting on behalf of the deceased Medicaid recipient.

i. The facility shall advise the contact person or responsible person that any claims made for PNA funds must be directed to the NF. When no CWA claim exists, the executor(rix) or administrator(rix), upon presentation of a letter of administration from the County Surrogate's Office, must be issued a check made payable to the estate of the deceased Medicaid recipient for the PNA funds. A check for the funds shall not be issued unless a Surrogate's letter is presented, except when a recipient dies intestate, leaving no surviving spouse, and the total value of the estate is less than $5,000; in such case, an affidavit of administration in accordance with N.J.S.A. 3B:10-4 is acceptable.

ii. If there is an outstanding funeral bill which is deemed reasonable and there is no claim by the CWA or an executor/administrator, the NF may directly reimburse the funeral director from the PNA funds.

iii. If no claim for PNA funds is made to the NF within 30 days of death, a check made payable to the "Treasurer, State of New Jersey" shall be forwarded to the Bureau of Administrative Control,

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Mail Code #6, CN-712, Trenton, New Jersey 08625-0712. The following information shall be included:

(1) An identification of the funds as unclaimed PNA funds of the deceased Medicaid recipient;

(2) Recipient's name;

(3) HSP (Medicaid) Case Number;

(4) Date of death; and

(5) Amount enclosed for that recipient.

iv. If a claim is received by the NF after the PNA funds have been forwarded to the Bureau of Administrative Control and within five years of the Medicaid recipient's death, the claim must be referred to the Bureau for processing. After five years, all claims received by the NF must be referred to the State Treasurer.

v. Any transactions involving distribution of a deceased Medicaid recipient's PNA funds must appear on the NF's record for audit purposes.

(g) Questions regarding personal needs allowance administration, for example, procedures, policy, or use of funds, should be directed to the Director of the Medicaid District Office serving the NF.

10:63-1.17 Residents rights

(a) The NF shall ensure that each resident and his representative are informed of their rights upon admission and provided with a written statement of all resident rights, in accordance with 42 CFR 483.10 through 483.15, the Nursing Home Resident Rights Act, N.J.S.A. 30:13-1 et seq. and N.J.A.C. 8:39-4.1.

(b) The NF shall ensure that every resident who is entitled to Medicaid benefits shall receive a written statement of the services covered in the Medicaid per diem rate, those services required to be offered by the NF on an as-needed basis, and any charges not covered under the Medicaid program while in the facility.

(c) The NF shall notify each resident of his or her right under State law to make decisions concerning his medical care and his or her right to formulate an advance directive in compliance with the New Jersey Advance Directives for Health Care Act, P.L. 1991, c.201 and the advance directive provisions of the Omnibus Reconciliation Act of 1990, effective December 1, 1991 and Department of Health licensing requirements at N.J.A.C. 8:39-9.5.

10:63-1.18 Medicare/Medicaid

(a) The New Jersey Medicaid Program will reimburse for NF services provided to combination Medicare/Medicaid recipients only after Medicare covered benefits have been fully utilized or when medically necessary services are not covered by the Medicare Program. (Exceptions—see (e)2i below).

(b) Only skilled nursing facilities (SNFs), as defined in N.J.A.C. 10:63-1.2, certified by the Health Care Financing Administration (HCFA) and the New Jersey Department of Health are eligible to be reimbursed by Medicare for services rendered consistent with all Medicare requirements.

(c) Medicare covers eligible beneficiaries needing post-hospital skilled nursing care when they are placed in Medicare certified facilities.

(d) When Medicare benefits are terminated or exhausted because of coverage limitations, Medicaid may be billed on behalf of eligible recipients, provided that:

1. The services are allowable and provided within the standards and procedures established by the New Jersey Medicaid Program as described in this manual.

2. The certified facility provides written documentation of a denial of Medicare coverage:

i. The certified facility shall indicate for all Medicare eligible beneficiaries through status reports, that the effort was made to apply for Medicare reimbursement prior to Medicaid billing. Status reports affirming denial shall be obtained from the Medicare Fiscal Intermediary. Status reports shall consist of:

(1) A copy of form Inpatient Hospital and Skilled Nursing Facility Admission and Billing SSA-1453; or

(2) A notice of denial of coverage form Notice of Medicare Claim Determination SSA-1954 or form Notice of Medicare Claim Determination SSA-1955; or

(3) The facility statement of non-coverage, signed by an administrator or officer, which shall be accepted only under the limitation of benefits.

(e) Medicare Part A coinsurance may be paid by the New Jersey Medicaid Program, but the total combined Medicare/Medicaid reimbursement may never exceed the facility's Medicaid Nursing Facility rate. If the Medicaid recipient has available income during the coinsurance period of Medicare eligibility, it shall be used to offset the coinsurance charges, prior to billing Medicaid. New Jersey Medicaid will pay Part B Medicare insurance premiums for all eligible Medicare-Medicaid recipients. Claims for Part B services shall be billed to Medicaid only after Medicare benefits have been exhausted. Medicare timely filing requirements shall be met prior to the reimbursement of coinsurance by Medicaid.

2. Coinsurance and deductible payment shall be made as follows:

i. Medicaid will not assume responsibility for payment of coinsurance for certain services under Part B Medical Insurance when the basis of payment is fee for service (for example, physicians or podiatrists). However, coinsurance is paid for certain other Part B Provider services where the basis for payment is not fee for service (for example, durable medical equipment), but only in those instances where the Medicare allowable reimbursement is less than the Medicaid established reimbursement for those items.

ii. Medicaid will assume responsibility for deductible payments for Part B Medical Insurance services.

SUBCHAPTER 2. NURSING FACILITY SERVICES

10:63-2.1 Nursing facility services; eligibility

(a) Eligibility for nursing facility (NF) services will be determined by the RSN, based on a comprehensive needs assessment which demonstrates that the recipient requires, at a minimum, the basic NF services described in N.J.A.C. 10:63-2.2.

1. Individuals requiring NF services may have unstable medical, emotional/behavioral and psychosocial conditions which require ongoing nursing assessment, intervention and/or referrals to other disciplines for evaluation and appropriate treatment. Typically, adult NF residents have severely impaired cognitive and related problems with memory deficits and problem solving. These deficits severely compromise personal safety and therefore, require a structured therapeutic environment. NF residents are dependent in several activities of daily living. Dependency in activities of daily living (ADL) may have a high degree of individual variability. Each separate ADL may be classified as either independent, requiring some assistance, or totally dependent.

i. Children requiring NF services exhibit functional limitations identified either in terms of developmental delay requiring nursing care over and above routine parenting or are limited in terms of specific age-appropriate physical and cognitive activities, functional abilities (ADL) or abnormal behavior, as demonstrated by performance at home, school or recreational activities.

(1) Children who have achieved developmental milestones within appropriate time frames and who require only well child care and/or treatment of acute, time limited illnesses or injuries shall not be eligible for NF services.

2. NF residents shall be those individuals who require services which address the medical, nursing, dietary and psychosocial needs that are essential to obtaining and maintaining the highest physical, mental, emotional and functional status of the individual. Care and treatment shall be directed toward development, restoration, maintenance, or the prevention of deterioration. Care shall be delivered in a therapeutic health care environment with the goal of improving or maintaining overall function and health status. The therapeutic environment shall ensure that the individual does not decline (within the confines of the individual's right to refuse treatment) unless the individual's clinical condition demonstrates that deterioration was unavoidable.

(b) All Medicaid participating NFs shall provide or arrange for services in accordance with statutory and regulatory requirements under 42 CFR 483 and Department of Health licensing rules at N.J.A.C. 8:39. Reimbursement of NF services is discussed in N.J.A.C. 10:63.

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(c) NF services shall be delivered within an interdisciplinary team approach. The interdisciplinary team shall consist of a physician and a registered professional nurse and may also include other health professionals as determined by the individual's health care needs. The interdisciplinary team performs comprehensive assessments and develops the interdisciplinary care plan.

10:63-2.2 Delivery of nursing services

(a) The NF shall provide 24-hour nursing services in accordance with the minimum standards set forth by the New Jersey Department of Health Long Term Care Facilities Licensing Standards, N.J.A.C. 8:39, which is incorporated herein by reference. Employing the service-specific case mix system to classify recipients with similar care requirements and resource utilization, the NF shall provide nursing services by registered professional nurses, licensed practical nurses and nurses aides on the basis of the total number of residents multiplied by 2.5 hours/day; plus the total number of residents receiving each of the following services:

1. Tracheostomy	1.25 hours/day
2. Use of respirator	1.25 hours/day
3. Head trauma stimulation/advanced neuromuscular/orthopedic care	1.50 hours/day
4. Intravenous therapy	1.50 hours/day
5. Wound care	0.75 hour/day
6. Oxygen therapy	0.75 hour/day
7. Nasogastric tube feedings and/or gastrostomy	1.00 hour/day

i. Nursing service requirements shall be classified and recorded for each individual Medicaid recipient on Section Q (see Appendix O, incorporated herein by reference) of the New Jersey Standardized Resident Assessment (SRA) instrument. Section Q (Appendix O) shall be reviewed and revised to reflect changes in the recipient's nursing service requirements at the time of each mandated review and revision of the SRA during the comprehensive assessment process and development of the interdisciplinary care plan. Section Q (Appendix O) is signed and dated by the registered professional nurse who completes the assessment. In the absence of necessary change to Section Q at the time of review, the current form may be signed and redated indicating that no change in nursing service requirements was identified.

(b) The NF provision of 2.5 hours/day means services provided to Medicaid recipients who are chronically or sub-acutely ill and require care for these entities, disease sequela or related deficits.

(c) The 2.5 hours of nursing care shall incorporate the principles of nursing process which consists of ongoing assessment of the recipient's health status for the purpose of planning, implementing and evaluating the individual's response to treatment.

1. In his or her capacity as coordinator of the interdisciplinary team, the registered professional nurse, who has primary responsibility for the recipient, shall perform, beginning on the day of admission, a comprehensive assessment of the recipient to provide, communicate and record within the SRA: baseline data of physiological and psychological status; definition of functional strengths and limitations; and determination of current and potential health care needs and service requirements.

i. In addition to clinical observations and hands-on examination of the Medicaid recipient, the licensed nurse shall review the HSDP and any available transfer records. The assessment data shall be coordinated by the registered professional nurse with oral or written communication and assessments derived from other members of the interdisciplinary team and shall be consistent with the medical plan of treatment. The initial comprehensive assessment (SRA) shall be completed no later than 14 days after admission and on an annual basis thereafter. If there is a significant change in the recipient's status, the NF shall complete a full comprehensive assessment involving the SRA. The registered professional nurse shall analyze the data and utilize the resident assessment protocols (RAPs) to focus problem identification, structure the review of assessment information and develop an interdisciplinary care plan which documents specific interventions unique to the individual, which define service requirements and facilitate the plan of treatment.

2. The interdisciplinary care plan shall identify and document the recipient's problems and causative or contributing factors and is derived from the comprehensive assessment. The plan shall be coordinated and certified by the registered professional nurse with active participation of the Medicaid recipient and/or significant other. The scope of the plan shall be determined by the actual and anticipated needs of the Medicaid recipient and shall include: physiological, psychological and environmental factors; recipient/family education; and discharge planning. The care plan shall be a documented, accessible record of individualized care which reflects current standards of professional practice and includes:

i. Identified problems (needs) and contributing factors;

ii. Specific and measurable objectives (outcomes) which provide a standard for measurement of care plan effectiveness;

iii. The plan of care shall emphasize interventions which prevent deterioration, maintain wellness and promote maximum rehabilitation; and

iv. The initial interdisciplinary care plan shall be completed and implemented within 21 days of admission and shall be reviewed regularly and revised as often as necessary, according to all significant changes in a recipient's condition and to attainment of and/or revisions in objectives as indicated. Review and appropriate revision shall be done at least every three months and whenever the clinical status of the recipient changes significantly or requires a change in service provision.

3. Implementation of the interdisciplinary care plan and delivery of nursing care shall be documented within nursing progress (clinical) notes, which shall establish a format for recording significant observations or interaction, unusual events or responses, or a change in the Medicaid recipient's condition, which requires a change in the scope of service delivery. Specific reference shall be made to the recipient's reactions to medication and treatments, rehabilitative therapies, additional nursing services in accordance with N.J.A.C. 10:63-2.4(a), observation of clinical signs and symptoms, and current physical, psychosocial and environmental problems. Nursing entries shall be made as often as necessary, based on the Medicaid recipient's condition and in accordance with the standards of professional nursing practice.

4. Assessment review is the process of ongoing evaluation of health service needs and delivery. Nursing actions shall be analyzed for effectiveness of care plan implementation and achievement of objectives. The registered professional nurse, along with the Medicaid recipient and/or significant other, shall participate with the team in the ongoing process of evaluation, reordering priorities, setting new objectives, revision of plans for care and the redirection of service delivery.

i. The assessment review process shall be conducted quarterly. Conclusions shall be documented on the SRA quarterly review, and the interdisciplinary care plan shall be updated to provide a comparison of the Medicaid recipient's previous and present health status, and to outline changes in service delivery and nursing interventions. The assessment review shall identify the effectiveness of, and the Medicaid recipient's response to, therapeutic interventions, and, whenever possible, the reason for any ineffectiveness in recipient responses.

(d) Restorative nursing is a primary component in the delivery of the 2.5 hours of nursing care. Restorative nursing addresses preventable deterioration and is directed toward assisting each recipient to attain the highest level of physical, mental, emotional, social and environmental functioning. Restorative nursing functions shall include:

1. Supervision, direction, assistance, training or retraining in all phases of activities of daily living to promote independence or growth, and to develop or restore function to the extent the individual is able (bathing, dressing, toileting, transfers and ambulation, continence, and feeding);

2. Discharge planning which focuses on assessment of the caregiving potential of the resident, family or significant other. The nurse shall, along with other members of the interdisciplinary team, extend the assessment beyond the needs of the resident to include assessment of the caregivers' ability to provide long-term care and

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their need for information on normal growth, development or aging; care needs; medication and treatment; home safety and the need for additional supports, both formal and informal, in preparation for the resident's return to the community;

3. Proper positioning of the individual in bed, wheelchair or other accommodation to prevent deformities and pressure sores;

4. Program of bowel and bladder retraining for incontinence, in accordance with the individual's potential for restoration;

5. Range of motion exercises, active and passive, as necessary;

6. Follow-up care as required for physical therapy, occupational therapy and/or speech-language pathology services;

7. Follow-up care as required for uncomplicated plaster care; assistance with adjustment to and use of prosthetic and/or orthotic devices;

8. Routine care and maintenance of ostomies (that is, cleansing and appliance change and instruction for self care);

9. Resident education relative to health care, special diet, and, if ordered by the physician, self-administration of medication;

10. Encouragement of resident participation in, and monitoring resident response to, individual or group activities and therapies for psychosocial maintenance and restoration; and

11. In a NF providing care to children, the application of the principles of growth and development in planning, implementing and evaluating care needs; consideration of the child's physical and developmental functioning with respect to his/her need for recreational and educational stimulation and growth; and application of behavior modification techniques in the management of developmental and disability-related behavior problems.

(e) The 2.5 hours of nursing care provided shall also include, but not be limited to, the following nursing procedures, therapies and activities:

1. Safe and appropriate administration of medications;

2. Emergency care (for example, oxygen, injections, resuscitation);

3. Observation, recording, interpretation and reporting of vital signs, height and weight;

4. Intake and output recording, as clinically indicated;

5. Catheter care including intermittent or continuous bladder irrigations, intermittent catheterizations, and use of other drainage catheters;

6. Preparations for laboratory procedures and collection of laboratory specimens;

7. Telephone pacemaker or electrocardiogram checks;

8. Terminal illness management, when there is need for supportive services and intensive personal care;

9. Heat or cold treatments as ordered by the physician;

10. Risk determination for pressure sores using a standardized assessment instrument and implementation of necessary preventive measures as clinically indicated (for example, mattress overlays or cushions, positioning schedule, range of motion, nutrition support, skin care and skin checks);

11. Care of Stage I and II pressure sores, as follows:

i. A Stage I pressure sore is an area of redness which does not respond to local circulatory stimulation. It involves the epidermis. No break in the skin is evident;

ii. A Stage II pressure sore is a partial thickness, loss of skin layers with epidermis and possibly dermis involvement. A shallow ulcer or blister appears, and the site is free of necrotic tissue;

iii. An individual who enters the NF without pressure sores should not develop them unless the individual's condition demonstrates pressure sores were unavoidable. Treatment of superficial skin tears, wounds, excoriations and lesions shall be included in the 2.5 hours of care;

12. The long-term care of a simple stabilized tracheostomy with minimal care and supervision by licensed staff;

13. Uncomplicated administration of respiratory therapies requiring minimal staff assistance, direction, and supervision;

14. Protection of individuals through the appropriate use of universal precautions, in accordance with Centers for Disease Control guidelines published in the Morbidity and Mortality Weekly Report, volume 38, number 5-6 (Centers for Disease Control, Atlanta, Ga. 30333);

15. Appropriate use of restraints (physical and/or chemical), in accordance with the physician's order and N.J.A.C. 8:39 licensure standards, and clinically appropriate measures to guarantee the safety of individuals (for example, side rails);

16. Observation, supervision and recording of basic nutritional states for maintenance of current health status and prevention of deficiencies;

17. Observation, supervision and instruction concerning special dietary requirements during ongoing adjustment to treatment regimen for diagnosed medical conditions;

18. Nursing treatment, observation and/or direction of mental status impairment which necessitates nursing supervision and intervention (for example, marked confusion and/or disorientation in one, two, or three spheres (time, place and/or person), marked memory loss, severe impairments in judgment); and

19. Emotional support and counseling on an ongoing basis, and during adjustment to impaired physical and mental states, including observation for changes in affect and mood which may require special precautions and/or therapies.

(f) Nursing services requiring additional nursing hours above 2.5 hours/day are set forth in (f)1 through 7 below. An individual recipient may require one or more additional nursing services, however, each category of additional nursing service may only be counted once for each individual recipient.

1. Wound care (.75 hours), which includes, but is not limited to, ulcers, burns, pressure sores, open surgical sites, fistulas, tube sites and tumor erosion sites. In this category are Stage II pressure sores encompassing two or more distinct lesions on separate anatomical sites, Stage III and Stage IV pressure sores.

i. Tube site and surrounding skin related to ostomy feeding is not to be counted as an additional nursing service unless there are complicating factors such as: exudative, suppurative or ulcerative inflammation which require specific physician prescribed intervention provided by the licensed nurse beyond routine cleansing and dressing.

ii. Stage III and Stage IV are defined as follows:

(1) Stage III. The wound extends through the epidermis and dermis into the subcutaneous fat and is a full thickness wound. There may be inflammation, necrotic tissue, infection and drainage and undermining sinus tract formation. The drainage can be serosanguinous or purulent. The area is painful.

(2) Stage IV. The pressure wound extends through the epidermis, dermis, and subcutaneous fat into fascia, muscle and/or bone. Eschar, undermining, odor and profuse drainage may exist.

(3) Other wounds which may be categorized under wound care as defined in (f)1 above include:

(A) Open wounds which are draining purulent or colored exudate or which have a foul odor present and/or for which the individual is receiving antibiotic therapy;

(B) Wounds with a drain or T-Tube;

(C) Wounds which require irrigation or instillation of a sterile cleansing or medicated solution and/or packing with sterile gauze;

(D) Recently debrided ulcers;

(E) Wounds with exposed internal vessels or a mass which may have a proclivity for hemorrhage when dressing is changed (for example, post radical neck surgery, cancer of the vulva);

(F) Open wounds, widespread skin disease or complications following radiation therapy, or which result from immune deficiencies or vascular insufficiencies; and

(G) Complicated post-operative wounds which exhibit signs of infection, allergic reactions or an underlying medical condition that affects healing.

2. Tube feedings (1.00 hr/day), which include nasogastric tube, and percutaneous feedings may be used if the feedings are required to treat the individual's condition after all non-invasive avenues to improve the nutritional status have been exhausted with no improvement. The clinical record shall document the non-invasive measures provided and the individual's poor response. The record shall also indicate the medical condition for which the feedings are ordered. Included in this service is the routine care of the tube site and surrounding skin of the surgical gastrostomy.

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i. Feeding tubes that are routinely clamped off and are no longer the primary source of dietary administration and nutritional support are covered under the basic 2.5 hours/day of nursing service and shall not be counted as an additional nursing service.

3. Oxygen therapy (.75 hrs/day), which includes complex provision of oxygen/respiratory therapies due to the nature of the individual's condition, type or multiplicity of procedures required and the need for therapies for which individual is dependent upon administration by licensed staff such as positive pressure breathing therapy, nasal BiPAP and aerosol therapy.

4. Tracheostomy (1.25 hrs/day), which includes new tracheostomy sites and complicated cases involving symptomatic infections and unstable respiratory functioning.

5. Intravenous Therapy (1.50 hrs/day), which includes clinically indicated therapies ordered by the physician, such as central venous lines, Hickman/Broviac catheters, heparin locks, total parenteral nutrition, clysis, hyperalimentation and peritoneal dialysis. When clinically indicated, intravenous medications should be appropriately and safely administered within prevailing medical protocols. If intravenous therapy is for the purpose of hydration, the clinical record shall document any preventive measures and attempts to improve hydration orally, and the individual's inadequate response.

6. Respirator use (1.25 hrs/day), which includes care for individuals who are stable and no longer require acute or specialized respirator programs and who require mechanical ventilation to oxygenate their blood. Ongoing assessment and intervention by a licensed nurse is needed. The individual's treatment plan should include protocols for weaning the individual from assisted respiration and/or self care when clinically indicated and ordered by the physician.

7. Head trauma stimulation/advanced neuromuscular/orthopedic care (1.50 hrs/day), as follows:

i. Care of head trauma is directed toward individuals who are stable (have plateaued) and can no longer benefit from a rehabilitative unit or unit for specialized care of the head injured. Individuals shall have access to and periodic reviews by such specialists as a neurologist, neuropsychologist, psychiatrist and vocational rehabilitation specialist, in accordance with their clinical needs. There shall also be contact with appropriate therapies, such as physical therapy, speech-language pathology services and occupational therapy. The distinguishing characteristic for add-on hours for head trauma is the necessity for ongoing assessment and follow-up by licensed nursing personnel focusing on early identification of complications, and implementation of appropriate nursing interventions. Nursing protocols may be initiated which are specifically designed to meet individual needs of head injured individuals. The nurse may also supervise a coma stimulation program, when this need is identified by the interdisciplinary team.

ii. Advanced neuromuscular care needs will be identified by the physician for individuals during an unstable episode or where there is advanced and progressive deterioration in which the individual requires observation for neuro-logical complications, monitoring and administration of medications or nursing interventions to stabilize the condition and prevent unnecessary regression.

iii. Advanced orthopedic care is the care of plastered body parts with a pre-existing peripheral vascular or circulatory condition requiring observations for complications and monitoring and administration of medication to control pain and/or infection. Such care also involves additional measures to maintain mobility; care of post-operative fracture and joint arthroplasty, during the immediate subacute post- operative period involving proper alignment; teaching and counseling and follow-up to therapeutic exercise and activity regimens. Individuals in this group shall be identified by the physician as needing advanced orthopedic care. If the requirement for advanced orthopedic care exceeds 30 days, clinical need must be demonstrated and clearly documented by the interdisciplinary team.

10:63-2.3 Physician services

(a) General requirements for physician services shall be as follows:

1. Each Medicaid recipient's care shall be under the supervision of a New Jersey licensed attending physician chosen by, or agreed to by, the Medicaid recipient, or if the recipient is incompetent, by the family or legal guardian.

2. In a NF providing care to children, the attending physician shall be board certified/eligible by the American Board of Pediatrics or the American Board of Family Practice.

3. The NF shall maintain arrangements which assure that the services of a New Jersey licensed physician who can act in case of emergency, are continuously available.

(b) Requirements for a medical director shall be as follows:

1. The NF shall retain, pursuant to a written agreement, a physician licensed under New Jersey State Law to serve as Medical Director on a part-time or full-time basis as is appropriate for the needs of the residents and the size of the facility. The Medical Director shall be responsible for the overall development of medical policies and coordination of the medical care in the facility to ensure the adequacy and appropriateness of the medical services provided to the residents and to monitor the health status of the employees.

i. In a NF providing care exclusively to children, the medical director shall be certified/eligible by the American Board of Pediatrics or the American Board of Family Practice.

2. The duties of the medical director shall include, but not be limited to, the following:

i. Participation in the development of written policies, rules and regulations which are approved by the governing body of the facility;

ii. Delineation of the responsibilities of the attending physician(s) and ensuring that visits by medical consultants occur as needed;

iii. Acting as liaison between administration and medical staff for improving services and ensuring the carrying out of responsibilities of the medical staff;

iv. Surveying the execution of resident care policies, which includes a periodic evaluation of the adequacy and appropriateness of the services of health professional and supporting staff and monitoring the health status of the facility's employees;

v. Participation in the review of incidents and accidents that occur on the premises to identify hazards to health and safety of employees and residents. The Medical Director is given appropriate information to help ensure a safe and sanitary environment for residents and personnel;

vi. Ensuring that the medical regimen is incorporated in the resident care plan;

vii. Participation in the facility's quality assurance program through meetings, interviews and/or preparation or review of reports regarding infection control, pharmaceutical services, credentials, resident care, etc.;

viii. Collaboration with administration in the planning of educational programs for facility staff;

ix. Reviewing written reports of surveys and inspection and making recommendations to the administrator;

x. Participation in special projects, such as medical evaluation studies;

xi. Negotiating and resolving problems with the medical community;

xii. Responding quickly and appropriately to medical emergencies which are not handled by another attending physician; and

xiii. Ensuring that, for each Medicaid recipient, there is a designated primary and alternate physician who can be contacted when necessary.

(c) Requirements for an attending physician shall be as follows:

1. Initial medical findings and physician's orders;

i. There shall be available to the NF, prior to, or at the time of admission, resident information which includes medical history, diagnosis, current medical findings, medical plan of care and rehabilitation potential.

ii. If the resident is transferred from another health care facility, a transfer summary of the course of treatment including findings of diagnostic services shall accompany the resident. If the transfer summary information is not available in writing in the facility upon admission of the resident, it shall be obtained by the facility after admission.

iii. There shall be orders from a physician for the immediate care of the resident, to include, at a minimum, medications, dietary

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needs, hygiene, level of activity, and special therapies, if applicable. A current health facility discharge summary containing the information is acceptable.

(1) If medical orders for the immediate care of the resident are unobtainable at the time of admission, the physician with responsibility for emergency care shall give temporary orders.

(2) Each resident shall be examined by a physician within five days before, or 48 hours after admission.

2. The attending physician shall also be responsible for initial and ongoing medical evaluation, as follows:

i. The medical assessment of the Medicaid recipient shall begin at the time of admission to a NF and shall be the foundation for the planning, implementation, and evaluation of medical services directed toward the care needs of the resident.

ii. The medical assessment shall consist of the complete, documented, and identifiable appraisal (from the time of admission to discharge) of the Medicaid recipient's current physical and psychosocial health status. The medical assessment shall be utilized to determine the existing and potential requirements of care. The evaluation of the data obtained from the medical assessment shall lead to the development of the medical services portion of the interdisciplinary care plan. The assessment data shall be available to all staff involved in the care of the resident.

iii. The tools utilized in the assessment process shall include a complete history and physical examination, eliciting medically defined conditions and prior medical history, admission form(s), transfer form(s), Health Service Delivery Plan (HSDP), and data from other members of the interdisciplinary team.

3. Other Medicaid recipient data utilized should include:

i. Clinical physical and psychological symptoms and signs;

ii. Capabilities to perform functional activities of daily living;

iii. Sensory (hearing, speech, and vision) and physical impairments;

iv. Medical necessity of additional nursing services, in accordance with N.J.A.C. 10:63-2.4;

v. Nutritional status and requirements;

vi. Special treatments or procedures (including laboratory and other diagnostic services);

vii. Psychosocial status;

viii. Dental condition;

ix. Activities potential;

x. Rehabilitation potential;

xi. Cognitive status;

xii. Drug therapy;

xiii. Safety requirements;

xiv. Attention to comfort and dignity; and

xv. Plans of alternative care, when applicable.

4. In addition to the requirements in (c)3 above, medical evaluations of children in a NF shall include the following:

i. Assessment of developmental status;

ii. Measurement and recording of head circumference until the age of 24 months;

iii. Measurement and recording of blood pressure, from age three;

iv. Assessment of immunization status and administration of appropriate immunizations according to the recommendations of the Academy of Pediatrics;

v. Hemoglobin determination once during each of the following times: six to eight months, two to six years, and 10 to 12 years of age;

vi. Urinalysis—a minimum of once between age 18 and 24 months and once between 13 and 15 years of age;

vii. Tuberculin testing once during each of the following times: nine to 12 months, four to six years, and 10 to 15 years of age; and

viii. Lead screening (EP Test) upon admission.

5. As an active member of the interdisciplinary team, the attending physician shall:

i. Identify and document the medical needs of the Medicaid recipient;

ii. Be attentive to and develop individualized preventive, maintenance, restorative and/or rehabilitative medical interventions in relation to the physical and psychosocial needs identified in order to prevent deterioration, maintain wellness and promote maximum development or restoration;

iii. Be observant of clinical signs and symptoms of the Medicaid recipient;

iv. Perform, annually, a complete physical examination, as the medical component of the comprehensive resident assessment;

v. Periodically evaluate and be cognizant of the Medicaid recipient's total clinical record including the interdisciplinary care plan and facilitate necessary changes as medically indicated;

vi. Identify and document the effectiveness of, and the Medicaid recipient's response to, therapeutic intervention such as medications, treatment and special therapies, and, where possible, the reason for any ineffectiveness in the Medicaid recipient's responses.

6. Physician progress notes shall:

i. Be maintained in accordance with accepted professional standards and practices as necessitated by the Medicaid recipient's medical condition;

ii. Be a legible, individualized summary of the Medicaid recipient's medical status and reflect current medical condition, including clinical signs and symptoms; significant change in physical or mental conditions; response to medications, treatments, and special therapies; indications of injury including the date, time and action taken; medical necessity for extent of change in the medical treatment plan; and

iii. Be written, signed, and dated at each visit.

(d) Physician orders shall be completed as follows:

i. Orders concerning medications and treatment shall be in effect for the specified number of days indicated by the physician, but in no case shall exceed a period of 60 days. Vague and blanket orders shall not be acceptable. The physician shall review all orders and re-confirm in writing with signature and date, when any orders are continued.

2. Stop orders shall conform with the standards of the Formulary Committee of the facility.

(e) Physician visits shall be conducted as follows:

1. All required physician visits shall be made by the physician personally, or a physician assistant or nurse practitioner, as permitted by State law.

i. For the first 90 days, the Medicaid recipient shall be visited and examined every 30 days. Thereafter, with written justification, the interval between visits may be extended for up to 60 days.

ii. Additional visits shall be made when significant clinical changes in the Medicaid recipient's condition require medical intervention.

10:63-2.4 Rehabilitative services

(a) Rehabilitative services include physical therapy, occupational therapy, and speech-language pathology services provided by a qualified therapist for the purpose of attaining maximum reduction of physical or mental disability and restoration of the resident to his best functional level. Rehabilitative services shall be made available to Medicaid recipients as an integral part of an interdisciplinary program. Rehabilitative services shall not include physical medicine procedures administered directly by a physician, or physical therapy which is purely palliative, such as the application of heat per se, in any form; massage; routine calisthenics or group exercises; assistance in any activity; use of a simple mechanical device; or other services not requiring the special skill of a qualified therapist.

1. If the attending physician orders an evaluation for physical, speech-language pathology services or occupational therapy, an appropriately qualified therapist shall perform an assessment to determine the need for services. The therapist shall complete a written report of therapy recommendations within 14 days of the physicians's order and shall include the report in the clinical record, for review by the attending physician.

2. Rehabilitative treatment shall be provided under the direct supervision and in the presence of a qualified therapist or physiatrist, only upon the written signed order of the physician who shall indicate modality and frequency and duration of treatments. The attending physician shall evaluate each resident's response to

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therapeutic services on a monthly basis. Continuance of said services shall be based on documentation of a potential for significant functional improvement within a reasonable time frame.

i. Rehabilitation therapy services shall be integrated with medical, nursing, recreational and social services to promote development or restoration of the resident to his/her maximum potential and reviewed in conjunction with other periodic reviews of the interdisciplinary care plan.

3. Rehabilitative services shall be provided by qualified therapists employed by or under contract to:

i. An approved home health agency;

ii. A licensed or accredited general or special hospital;

iii. An approved independent outpatient health facility; or

iv. A NF.

4. Rehabilitative services are considered part of the NF's cost. Reimbursement for such services is included in the NF's per diem rate.

10:63-2.5 Resident activities

(a) An ongoing resident activities program shall be established as an adjunct to the treatment program and an integral component of the interdisciplinary plan of care. The program shall be a planned schedule of age-appropriate social, physical, spiritual, psychological, leisure, cognitive, vocational and educational activities designed to meet the needs, interests, and behaviors of all residents, whether ambulatory, chair bound, or bedfast. In a facility providing care to children, activities programming shall be geared to the child's developmental and behavioral needs.

(b) Activities shall enable the residents to maintain a sense of usefulness and self-respect, and when possible, help to prevent regression. Activities shall encourage development or restoration to self-care and resumption of normal activities, stimulate and maximize the total functional ability of the resident and assist the resident to integrate into the social life of the facility. Families and friends of the resident shall be encouraged to accompany the resident to activities.

(c) Outside community resources, such as the Commission for the Blind, Office of Education, Divisions of Developmental Disabilities and Vocational Rehabilitation shall be accessed to develop needs-specific activities. Community outreach shall be done to encourage community groups to participate in programs in the facility. Residents also shall be encouraged to participate in programs in the community.

(d) Resident activities staffing requirements are as follows:

1. The resident activities director shall meet the qualifications required by N.J.A.C. 8:39-7, Mandatory Patient Activities. In a facility providing care exclusively to children, the resident activities director who does not possess a baccalaureate degree shall have one year of the required three years of experience in a recreational program for children.

2. The facility shall appoint a resident activities director who shall provide patient activity services in the facility on an average of 45 minutes per week per resident. Facilities of more than 60 residents shall have a full-time coordinator. Additional resident activity staff time shall be provided to the number of residents over 60 at a ratio of no less than 1:53 residents.

3. The use of volunteers should be encouraged as adjuncts to staff. Volunteers should be trained and supervised in the performance of their duties by qualified staff.

(e) Scheduling requirements are as follows:

1. A monthly schedule of activities in large print shall be conspicuously posted so that residents and staff are aware of daily programs.

2. There shall be a diversity of activities seven days per week, including evenings. Evening activities shall be scheduled after the evening meal.

3. A resident council meeting shall be scheduled at least monthly. All residents shall be given the opportunity to have input into programming.

(f) Space and equipment requirements are as follows:

1. Sufficient space shall be provided for group activities and for each resident's individual use. Activity areas shall be accessible to all residents. Programs shall be provided on the resident units as well as general activity areas.

2. Community social and recreational facilities shall be utilized for those able to do so. Transportation shall be provided to and from destinations in the community.

3. Adequate indoor and outdoor recreational areas shall be provided with sufficient equipment and materials available to support ongoing programs as well as self-directed activities.

4. In a facility providing care to children, a safe, handicapped accessible outdoor play area shall be provided.

(g) Resident planning requirements are as follows:

1. Activities staff shall be integral members of the interdisciplinary team and shall participate in all resident care conferences and quarterly reviews. Resident activities staff shall have input into the assessment.

2. Activities staff shall conduct an initial assessment of activity needs within 14 days after the date of admission. The assessment shall include the resident's current functioning, past lifestyle, interests, skills, employment, hobbies, organizational memberships, and religious preferences. This information shall form the basis for the activities component of the SRA.

3. The activities staff shall be aware of each resident's physical and medical limitations and restrictions, so that activities participation is coordinated with the treatment plan.

4. A plan for the resident's activities program shall be formulated, with the active participation of the resident, if possible. Activity goals shall be developed as an outcome of the SRA and in conjunction with the interdisciplinary care plan.

5. Progress towards goals shall be evaluated with the resident at least quarterly in conjunction with the interdisciplinary review of the care plan. If a resident's functional status changes, resident activity staff shall review the activity plan and make revisions of goals, if necessary.

6. Residents shall be encouraged to participate in a variety of activities. Outreach efforts to involve residents in activities programs shall be the responsibility of all staff.

7. All staff of the facility shall be trained at least yearly in the value of an activities program for overall effective resident care and shall encourage participation in activities.

8. On readmission after a period of hospitalization, an activities worker shall review the resident's functioning and shall participate in a reassessment, if a significant change has occurred.

10:63-2.6 Social services

(a) Social work services shall have as their fundamental purpose the enhancement of a resident's sense of well-being and control over his life to the fullest extent possible. Social work interventions shall be geared to the resident's strengths, regardless of the extent of disability and shall be designed to enhance coping skills. Social work services shall help residents make the fullest use of nursing facility life, and shall assist residents in discharge to community living.

(b) Social workers shall assist residents with the emotional reactions to pain and functional loss, interpersonal conflicts, fear of death, and other issues impacting on the quality of life. Supportive intervention and encouragement shall be provided. The social worker collaborates with other staff to maximize opportunities for choice and individual expression. Social workers shall monitor a resident's concrete and personal needs and shall serve as primary advocates for the resident in the NF.

(c) Social work services shall not include:

1. Clerical or billing activity;

2. Public relations activity that does not relate to social work services; or

3. Medical records monitoring responsibilities.

(d) Social services staffing and qualifications shall be as follows:

1. Social work services shall be provided in accordance with accepted professional practice by persons who meet the qualifications for social worker as defined in the Social Workers' Licensing Act of 1991 N.J.S.A. 45:15BB-1 et seq. and the licensure requirements of N.J.A.C. 8:39-39. In a NF providing care to children, it is recommended that social service staff receive consultation and training in social care for children.

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2. The facility shall provide a minimum of one full-time equivalent social worker for every 120 residents. In a facility with more than 120 residents, one social worker shall coordinate the work of the department.

(e) Social services assessment and care planning shall be as follows:

1. The social worker shall meet with the resident and family prior to or following admission and shall conduct a social assessment. The social assessment shall be completed within 14 days of admission and shall provide the basis for social service input into the SRA. The assessment shall gather sufficient information to provide an accurate understanding of the individual and shall include the following:

i. Current problem areas, factors that led to placement, and reactions to placement by the resident and family;

ii. Lifestyle and living arrangements before placement;

iii. Family composition, place of birth, marital history, number and location of children;

iv. Social history, which includes personality factors, adaptation to change and disability, interest, religious ties, community activities, medical and psychiatric history, substance abuse; and

v. Discharge criteria.

2. As an integral member of the interdisciplinary team, the social worker shall have active input into the completion of the Standardized Resident Assessment (SRA). The social worker shall attend resident care conferences and quarterly reviews.

3. Resident goals shall be developed as an outcome of the SRA and in conjunction with the interdisciplinary care plan. The resident and family shall be included in the development of goals if possible.

4. Reassessment of the resident's social needs shall be done annually in conjunction with the interdisciplinary team's review of the SRA. Any new social information shall be recorded in the progress notes.

5. Expectations regarding potential discharge shall be discussed fully with all residents and families on admission. The special needs of residents identified as only needing short term placement (Track II) during pre-admission screening shall be discussed with the resident and family on admission. The family's criteria for discharge shall be fully explored and goals for discharge shall be incorporated into the interdisciplinary care plan.

6. Progress towards goals shall be reviewed with the interdisciplinary team quarterly, or when significant changes occur. Residents and families shall be included in the interdisciplinary care plan review, if possible. Goals shall be based on a current review of resident and family needs and the existing problems to be addressed, as reflected in the current SRA.

7. The social worker shall remain familiar enough with each resident to have an understanding of each resident's psycho-social function and to provide assistance as needed.

8. The social worker shall document important or unusual events and other circumstances which require social service intervention.

9. The record shall reflect the resident's current psycho-social functioning and social work interventions.

10. On readmission of a resident after a period of hospitalization, the social worker shall review the resident's functioning and participate in a reassessment if a significant change has occurred. If a new chart is opened on readmission, a copy of the original social assessment shall be included.

11. The resident's written consent (or that of a responsible person acting on his or her behalf) shall be obtained before social service information is transmitted to an outside agency or individual. The consent form shall be on the resident's chart. All personnel having access to the record shall be trained to appreciate its confidential nature.

(f) Social services consultation shall be as follows:

1. The social worker shall provide consultation services to residents and family members at the time of admission.

2. Consultation shall be given to the resident when the need arises, upon referral, or when the resident requests it. Situations which may require consultation include problems in adjusting to functional limitations and losses and decline in cognitive functioning involving loss of memory, confusion, and disorientation. Social work consultation may also used to help residents deal with depression, anxiety, and lack of motivation and other problems affecting interpersonal relationships, such as aggressive or self-isolating behavior.

3. The social worker shall provide crisis intervention when medical or personal crises occur, or when there is a death of a family member or other significant person. Consultation shall also be offered when residents require assistance in mourning losses that occur within the NF.

4. Social work intervention shall be provided when residents exhibit behavior problems, resistance to care, roommate conflicts, or other adjustment difficulties.

5. The social worker shall encourage residents to participate in their treatment plans and activities within and outside the facility, and to form satisfying and appropriate friendships with other individuals in the NF.

6. The social worker shall provide consultation to staff when interpersonal conflicts or behavior problems occur among residents or between residents and staff.

(g) Social services liaison services shall be as follows:

1. The social worker shall make frequent rounds in the NF, in order to maintain contact and to be accessible to residents who may require or be seeking assistance, and to maintain good communication with other staff.

2. Liaison contact with families shall be maintained by the social worker throughout a patient's stay. The frequency of contact shall depend on the resident's and family's needs.

3. The social worker shall be active in interpreting facility policies and procedures to the resident and his family during the initial period following admission. Questions, problems and complaints shall be addressed promptly.

4. The social worker shall act on a physician's order for a social service consultation within two working days (weekdays).

5. The social worker shall assist in identifying residents who may be in need of psychological or psychiatric intervention.

6. The social worker shall assist staff in understanding the resident's personal situation and background in order to enhance the ability of staff to deal with the resident appropriately.

7. The social worker shall deal with problems concerning family visitation and support.

8. The social worker shall serve as a resource to assist families with social service needs and to locate other agencies for assistance.

(h) Social work services and supportive services shall be as follows:

1. The social worker shall ensure that the resident has sufficient clothing and other personal items and that the resident's basic needs are being met.

2. The social worker shall ensure that the resident's rights are protected and that the Personal Needs Allowance (PNA) is properly utilized.

3. The social worker shall assist residents in understanding and exercising their rights, including the right to make health care decisions.

4. The social worker shall assist the resident in obtaining needed entitlements, community, or legal services.

5. The social worker shall facilitate the acquisition of prosthetic and assistive devices if necessary.

6. The social worker shall assist the resident and/or family in applying for Medicaid benefits, when appropriate.

7. The social worker shall work with the Activities and/or Volunteer Services Departments to obtain visitors for residents who have no supportive family or are otherwise isolated, or who have communication difficulties due to a language barrier.

8. The social worker may develop support and education groups for residents and families, as appropriate. The social worker shall serve as coordinator or co-coordinator in family support groups held in the NF and shall participate actively in meetings of the Resident's Council.

(i) Social work services and discharge planning shall be as follows:

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1. The social worker shall be the primary staff member responsible for coordinating and carrying out discharge planning.

2. Discharge planning is a process that begins on admission and continues throughout the resident's stay until discharge occurs or is no longer feasible. Discharge planning shall be a collaborative effort by the entire interdisciplinary team. The social worker shall work very closely with nursing staff and other therapists until discharge is accomplished.

3. All residents shall have the right to live in the least restrictive setting possible. The social worker shall, in concert with other members of the interdisciplinary team, identify residents who may have discharge potential.

4. The social worker shall consult the HSDP on admission to determine the recommendations of the Medicaid RSN concerning discharge and to identify Track II residents.

5. All residents who appear to be appropriate for discharge shall have their needs reviewed. This review shall include physical and social functioning, medical needs in the community, current and potential supports, resources needed for community living, and psychological readiness for discharge.

6. Discharge planning shall be carried out by means of an interdisciplinary care plan that includes goals and time frames. Social work intervention geared towards discharge shall be recorded as interim notes. The discharge plan shall include:

i. The level of functioning which needs to be achieved by the resident prior to discharge;

ii. Housing needs: the availability of prior living arrangements and the type of future housing needed for successful discharge (for example, apartment, family home, rooming or boarding home, residential health care facility, foster home and/or shared housing);

iii. any informal support systems available to the resident;

iv. Specific financial assistance needed by the recipient; and

v. Specific community resources needed for care in the community (for example, meals-on-wheels, day-care and/or home health assistance).

7. The social worker shall link the resident to necessary community resources and shall follow up to verify that services have been implemented.

8. The social worker shall assist in identifying the family's training needs for resident care in order to implement a successful discharge plan.

9. The social worker shall maintain active contact with the resident, his family, and significant others to support their involvement with the discharge plan.

10. The social worker shall be acquainted with formal resources that are available in the community and shall maintain an up-to-date resource file.

(j) In a NF providing care to children, the social worker shall initiate contact with the local school district when a child is admitted. The social worker shall also continue to serve as the coordinator between the local school district and the NF to facilitate the best care for the child.

10:63-2.7 Pharmaceutical services; general

(a) Prescribed legend drugs shall be supplied to each individual resident by a licensed pharmacy. Legend drugs may be supplied to individual residents by other than a licensed pharmacy when dispensed by NF medical professional staff from an emergency drug box, or the like, supplied by the NF's contracted pharmacy provider. Non-legend drugs, such as aspirin, milk of magnesia, etc., may be separately stocked in the drugroom or medication cart of the NF. This will permit the NF to maintain a supply of non-legend drugs to be administered as directed by the prescribing physician under the supervision of a NF professional staff in keeping with established stop order policies (see (b) below). Reimbursement for non-legend drugs (that is, drugs which by Federal law do not require a prescription) shall be included in the NF per diem rate.

1. The New Jersey Medicaid program shall not reimburse for Methadone when used for drug detoxification or addiction.

(b) "Stop orders" are internal policy regulations of the NF and unrelated to the New Jersey Medicaid program rules. Thus, such "stop orders" shall not supersede Program rules concerning the prescribing of drugs and pharmaceutical services as outlined in N.J.A.C. 10:61, Pharmacy Services.

(c) In NFs, if the quantity of drug or medication is not indicated in writing by the prescriber, the pharmacy provider shall dispense an appropriate quantity of medication not to exceed a one month supply.

1. In NFs, a written physician order shall be considered a prescription. A physician order written to continue medication administration shall be considered a new prescription and issued a unique prescription number by the NF contracted pharmacy provider.

(d) Pharmacies with Institutional Permits shall be reimbursed pro-rated capitation which shall equal 75 percent of the capitation rate approved by Medicaid for pharmacies with Retail Permits.

(e) Signed physicians' orders for medications, drugs, tests, diet, and treatment administered to Medicaid recipients must be accurately recorded on the recipient's chart with review and update as required.

(f) All services required of a Consultant Pharmacist in NFs, as stipulated in Federal and State statutes, rules and regulations, including, but not limited to, those listed in this subsection shall be provided.

1. Responsibilities of the consultant pharmacist shall be as follows:

i. Assure that all drugs are dispensed, and in cooperation with the Director of Nursing, shall assure all drugs are administered in compliance with all State and Federal laws;

ii. Establish and monitor the implementation of written policies and procedures, through the Pharmaceutical Services Committee (Pharmacy and Therapeutics Committee), to assure the safe use, storage, integrity, administration, control and accountability of drugs;

iii. Assure the drug records are in order and that an account of all controlled substances is maintained and reconciled;

iv. Assure that recipients' medication records are accurate, up to date, and that these records indicate that medications are administered in accordance with physician's orders and established stop-order policies;

v. Assure that drugs, biologicals, laboratory tests, special dietary requirements and foods, used or administered concomitantly with other medication to the same recipient, are monitored for potential adverse reactions, allergies, drug interactions, contraindications, rationality, drug evaluation, and laboratory test modifications, and that the physician is advised promptly of any recommended changes;

vi. Review the drug regimen (that is, the dosage form, route of administration and time of administration) of each recipient at least monthly and report any irregularities pertaining to medications to the attending physician, Medical Director or Director of Nursing, as appropriate. Irregularities in the administration of medications shall also be reported promptly to the Director of Nursing.

vii. Report in writing at least quarterly to the Pharmaceutical Services Committee (Pharmacy and Therapeutics Committee), on the status of the facility's pharmaceutical services and staff performance as related to pharmaceutical services. This report shall include, but not be limited to, a summary of the review of each recipient's drug regimen and clinical record and the consultant pharmacist's findings and recommendations;

viii. Assure there is maintained and available upon request of the Director of the New Jersey Medicaid program or his or her designee, documented records of the disposition, disposal or destruction of unused or discontinued drugs;

ix. Serve as an active member of the Pharmaceutical Services Committee (Pharmacy and Therapeutics Committee), and Infection Control Committee of the facility;

x. Provide and document in-service programs for the complete nursing staff. This training shall include, but not be limited to, registered nurses, licensed practical nurses, and aides and shall be given at least quarterly; and

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xi. Devote a sufficient number of hours to carry out these responsibilities, maintain a written record of activities, findings and recommendations.

10:63-2.8 Consultations and referrals for examination and treatment

(a) Certain services, such as medical and surgical specialties, chiropractic, dental, mental health, podiatric, and vision care, shall be initiated by the attending physician as either a request for a "consultation" or as a "referral for examination and treatment".

(b) A consultation shall be ordered when the attending physician wishes an appropriate practitioner to evaluate, through history and appropriate physical findings and other ancillary means:

1. The nature and progress of a disease, illness, or condition, and/or
2. To establish or confirm a diagnosis, and/or
3. To determine the prognosis, and/or
4. To suggest appropriate therapy.

(c) When a consultant assumes the continuing care of the resident, subsequent services rendered by the consultant are not considered a consultation and other appropriate procedure codes shall be utilized.

(d) A referral for examination and treatment shall be ordered by the attending physician when he or she wishes a practitioner to assume responsibility for a specific aspect of the resident's care; for example, the attending physician may order a referral for examination and treatment for dental services.

(e) For the initial consultation examination and subsequent examinations, the record shall document the following:

1. The date of service;
2. The chief complaint(s);
3. Pertinent historical and physical data;
4. Reports of diagnostic procedures performed;
5. The diagnosis; and
6. The treatment.

(f) A request for either a consultation or a referral for examination and treatment shall be written and signed by the attending physician on the order sheet, and shall clearly indicate the reason for the request.

1. If the attending physician is unable to write the request on the order sheet, he or she may personally dictate, by telephone to an appropriate person at the facility, the order for the consultation or the referral for examination and treatment, indicating the supporting reason(s) for the request. The attending physician shall then, within seven days of requesting the consultation or referral for examination and treatment, countersign the order on the order sheet or sign and forward to the NF an identical order on a prescription form which will satisfy the requirements until the next visit, when he or she shall sign the order sheet.

2. In consideration of a resident's rights, a resident may request either a consultation or a referral for examination and treatment, provided it is consistent with medical necessity. The attending physician shall note the request on the order sheet and, if the physician so wishes, may note that it was made at the resident's request.

Example: Resident requests ophthalmologic consultation with Dr. Evans for significant refractive error.

Signed: A.B. Turner, M.D.

10:63-2.9 Mental health services

(a) All facilities shall assist Medicaid recipients to obtain mental health care through a licensed psychiatrist or psychologist, who shall provide, or make provision for, routine and emergency services.

(b) An initial consultation for mental health services shall be performed only upon a written order signed by the attending physician (on the order sheet) citing the reason(s) for the consultation in the progress notes.

(c) If the mental health services are recommended following initial consultation, the psychiatrist or psychiatrist may provide the mental health service upon the written order signed by the attending physician. If the individual who provides the mental health services is a psychiatrist, he or she shall comply with the Medicaid policies cited in N.J.A.C. 10:54 regarding the request for authorization requirements for mental health services. If the individual who provides the mental health services is a psychologist, he or she must comply with the Medicaid policies cited in N.J.A.C. 10:67 regarding the request for authorization requirements for mental health services.

(d) Therapeutic goals and outcomes shall be documented by the psychiatrist and/or psychologist in the clinical record and treatment provided only where there is potential for significant functional improvement within a reasonable time frame.

10:63-2.10 Dental services

(a) All facilities shall assist Medicaid recipients to obtain dental care through a licensed dentist, who shall provide, or make provision for:

1. Appropriate consulting services;
2. In-service education to the facility;
3. Policies concerning oral hygiene; and
4. Routine and emergency services.

(b) Dental examinations carried out to comply with the Department of Health's minimal requirements, as well as regular dental examinations, shall not be considered consultations and need not be brought to the attending physician's attention except as a matter of courtesy. However, treatments which involve invasive procedures such as extractions or fillings, except in an emergency, shall be brought to the attention of the attending physician who acknowledges clearance for such treatment on the order sheet.

(c) The dentist shall establish a time frame for the next periodic examination, either at the time of examination, or at the completion of treatment. The time frame entered on the clinical record may be for six months, one year, or any other time period that the attending dentist has established in accordance with his or her knowledge of the recipient.

(d) Dental care of a child residing in a NF shall be provided according to the American Dental Association Pediatric protocol.

(e) Policy and procedures regarding the provision of dental services are listed in the New Jersey Medicaid Program Manual for Dental Services, available from the American Dental Association, 211 East Chicago Ave., Chicago, IL 60611. Services requiring prior authorization are listed under 202.2 (N.J.A.C. 10:56-1.3).

10:63-2.11 Podiatry services

(a) All facilities shall assist Medicaid recipients to obtain podiatry care through a licensed podiatrist who shall provide, or make provision for:

1. Appropriate consulting services;
2. In-service education for the facility;
3. Policies concerning foot care; and
4. Routine and emergency services.

(b) Once the attending physician reviews the consultation and approves the treatment plan of the podiatrist, the physician shall not be required to sign a request every time the podiatrist treats the resident; however, the attending physician shall review and approve the need for the podiatric services for residents under treatment every six months, and if continuing service is indicated, complete a request for podiatric services for each resident under treatment at least once a year. This shall be accomplished by an order on the order sheet and not by repeated requests for consultation.

1. Podiatry services provided to children shall be prior authorized by MDO professional staff.

(c) Policies and procedures regarding the provision of podiatric services are outlined in the New Jersey Medicaid Program's Podiatry Services Manual (N.J.A.C. 10:57).

10:63-2.12 Chiropractic services

All facilities shall assist Medicaid recipients to obtain chiropractic care through a licensed chiropractor who shall provide, or make provision for routine and emergency services.

10:63-2.13 Vision care services

(a) All facilities shall assist Medicaid recipients to obtain vision care through a licensed ophthalmologist or optometrist who shall provide, or make provision for, routine and emergency services.

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(b) Policies and procedures regarding the provision of Vision Care services are outlined in the New Jersey Medicaid Program's Vision Care Manual (N.J.A.C. 10:62).

10:63-2.14 Laboratory; X-ray, portable X-ray and other diagnostic services

(a) A NF shall have written agreements with one or more general hospitals or one or more clinical laboratories so that the facility can obtain laboratory services, including emergency services promptly. If the facility has its own laboratory capabilities, the services may not be billed on a separate fee-for-service basis. A laboratory must be:

1. Licensed and/or approved by the New Jersey State Department of Health and the State Board of Medical Examiners which includes meeting Certificate of Need and licensure requirements, when required, and all applicable laboratory provisions of the New Jersey Sanitary Code; and

2. Certified as an independent laboratory under the Title XVIII Medicare Program; and

3. Approved for participation as an independent laboratory provider by the New Jersey Medicaid program.

(b) A NF shall have written agreements with one or more general hospitals or one or more Board certified or Board eligible radiologists so that the facility can obtain radiological services, including emergency services promptly.

1. Portable X-ray may be used when medically indicated. The mechanical portion of the services (obtaining the films) may be done by personnel of either the hospital or radiologist, but the interpretation of the film will be by a Board certified or Board eligible radiologist only.

2. X-ray services offered directly by the facility must be in adherence with the standards of the New Jersey Radiological Society.

(c) A NF shall have written agreements with one or more general hospitals or one or more qualified providers so that the facility can obtain other diagnostic services, such as ECG, EEG, CAT scan, MRI and ultrasonogram, including emergency services, promptly.

1. All diagnostic services shall be ordered by a physician, who shall be promptly notified of the test results.

2. All findings and reports shall be recorded in the recipients clinical record.

10:63-2.15 Medical supplies and equipment

(a) Medical supplies include incontinency pads, bandages, dressings, compresses, sponges, plasters, tapes, cellu-cotton or other types of pads used to save labor or linen, and other disposable items (for example, colostomy bags), hot water bags, thermometers, catheters, rubber gloves, and supplies required in the administration of medication including disposable syringes. Routinely used medical supplies are considered part of the institution's cost and cannot be billed directly to the program by the supplier.

(b) Equipment for administration of oxygen for residents in a NF is a required service. Oxygen itself must conform to United States Pharmacopoeia Standards in order to be used as a medicinal gas. (United States Pharmacopoeia Convention, 12601 Twinbrook Parkway, Rockville, MD 20852.)

(c) Routinely used durable medical equipment ordered for Medicaid recipients in a participating NF (for example, walkers, wheelchairs, bed-rails, crutches, traction apparatus, IPPB machine, electric nebulizers, electric aspirators, low-end pressure relief systems such as mattress overlays and mattress replacements, powered mattress systems and powered flotation beds) and other therapeutic equipment and supplies essential to furnish the services offered by the facility for the care and treatment of its residents shall be considered part of the NF's cost, and shall not be billed directly to the program by the supplier.

(d) When unusual circumstances require special medical equipment not usually found in a NF, such special equipment may be reimbursable, with prior authorization from the Medicaid District Office serving the county where the facility is located.

1. When special medical equipment is authorized and purchased on behalf of a Medicaid recipient, ownership of such equipment shall vest in the Division of Medical Assistance and Health Services. The recipient shall be granted a possessory interest for as long as the recipient requires use of the equipment. When the recipient no longer needs such equipment, possession and control shall revert to the Division. The recipient shall agree to this when he or she signs the "patient's certification" section on the claim form. The NF shall notify the MDO in writing when such equipment is no longer in use.

2. Prior authorization requests for special medical equipment shall be accompanied by documentation from the attending physician, the registered professional nurse who has primary responsibility for the recipient, and appropriate rehabilitative therapy personnel, which relates the medical necessity for the equipment and describes the extraordinary requirements of the recipient.

3. Pressure relief systems shall be reimbursed in a NF under the following conditions:

i. Air Fluidized and Low Air Loss therapy beds, as defined in N.J.A.C. 10:63-1.2, shall be considered special medical equipment and shall be prior authorized for reimbursement in a NF only when all of the following criteria, indicating medical necessity, are documented by the physician.

(1) The recipient has two stage III (full-thickness tissue loss) pressure sores or a stage IV (deep tissue destruction) pressure sore which involves two of the following sites: hips, buttocks, sacrum.

(2) The recipient with coexisting risk factors (such as vascular irregularities, nutritional depletion, diabetes or immune suppression) presents post-operatively with a posterior or lateral flap or graft site requiring short-term therapy until the operative site is viable.

(3) The recipient is bedridden or chair-bound as a result of severely limited mobility.

(4) The recipient is receiving maximal medical/nursing care, prior instituted conservative treatment has been unsuccessful and all other alternative equipment has been considered and ruled out.

(5) The bed is ordered, in writing, by the attending physician based on his or her comprehensive assessment (which includes a physical examination) and evaluation of the recipient.

(6) Prior authorization in conditions other than those defined above shall be considered on an individual basis by the MDO.

ii. Air fluidized and low air loss therapy beds shall not be covered for reimbursement in a NF under any of the following circumstances:

(1) As a preventative measure;

(2) After healing to stage II has occurred or wound stability (no significant change or evidence of healing) has been achieved;

(3) If the facility structure cannot support the weight of the bed or the facility electrical system is insufficient for the anticipated increase in energy consumption, air fluidized therapy shall be considered inappropriate. Reimbursement for an air fluidized bed shall be limited to the equipment itself. Payment shall not be made for architectural adjustments such as electrical or structural improvement.

iii. Prior authorization of air fluidized or low air loss therapy beds, if approved, shall be granted for 30 days only. Continued use beyond the initial approval period shall require prior authorization on a monthly basis. The following information shall be submitted to the MDO to obtain prior authorization:

(1) A completed FD-354 prior authorization form;

(2) The physicians' written prescription;

(3) A medical history relating to the wound which includes previous therapy and pressure relief systems utilized and found unsuccessful;

(4) Physician progress notes indicating medical necessity, plan of treatment and evaluation of response to treatment specific to the care of the wound;

(5) The wound care flow sheet documenting weekly the site, size, depth and stage of the wound, noting also the presence and description of drainage or odor;

(6) Laboratory values including a complete blood count and blood chemistries initially and on request thereafter;

(7) A nutritional assessment by a registered dietitian initially on request thereafter; and

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(8) Photographs of the site upon permission of the recipient/family, after full due consideration is afforded to the recipient's right to privacy, dignity and confidentiality.

iv. After treatment with an air fluidized or low air loss therapy bed is initiated, the recipient shall:

(1) Be examined by the physician on a monthly basis;

(2) Remain on the therapy unit and be confined to bed, unless medically necessary. While confined to bed, due consideration shall be given to the recipient's need for social and sensory stimulation and recreational diversion by providing in-room visitation and social/recreational activities appropriate to the recipient's condition; and

(3) Be repositioned on a turning schedule of not less than every two hours.

v. Professional staff from the MDO may, at their discretion, perform an onsite visit to evaluate the recipient prior to or after therapy has been instituted. Continued approval shall be contingent upon the facility's compliance with the criteria and conditions defined in (d)3i, ii, iii and iv above and cooperation of the recipient to the therapeutic modality.

10:63-2.16 Consultant services; general

If the NF has significant, unresolved or recurring problems, the NF shall be required to provide appropriate consultation in any service area until the problems are corrected.

10:63-2.17 Transportation services

(a) The NF shall assist a Medicaid recipient in obtaining transportation when the recipient requires a Medicaid-covered service or care not regularly provided by the NF.

(b) If a transportation service is provided by the NF to an inpatient of the NF, no additional reimbursement shall be allowed. Reimbursement shall be included in the per diem rate.

(c) Ambulance service shall not require authorization from the MDO, but shall be reimbursable to the transportation provider only when the use of any other method of transportation is medically contraindicated. (See N.J.A.C. 10:50-1.3(c)2 for specific conditions for ambulance service reimbursement.)

(d) Invalid coach services shall not require prior authorization from the MDO.

1. Invalid coach services shall be provided by a transportation provider approved in accordance with N.J.A.C. 10:50, Transportation Services.

2. An invalid coach may be utilized when a Medicaid recipient requires transportation from place to place for the purpose of obtaining a Medicaid-covered service and when the use of an alternative mode of transportation, such as a taxi, bus, livery, or private vehicle would create a serious risk to life or health.

(e) Transportation by taxi, train, bus and other public conveyances shall not be directly reimbursable by the New Jersey Medicaid program. Inquiry should be made to the County Welfare Agency for authorization and payment for such transportation.

(f) Policy and procedures regarding the provision of transportation services are outlined in the New Jersey Medical Transportation Services Manual (N.J.A.C. 10:50-1.3 through 1.6).

10:63-2.18 Bed and board

(a) Beds are provided in rooms licensed by the New Jersey Department of Health. A NF providing care to children shall have available protective cribs for infants and small children, as well as appropriate furniture, sized and scaled for children.

(b) Board shall be provided to meet basic nutritional needs and shall include the provision of therapeutic diets as prescribed by the attending physician.

10:63-2.19 Housekeeping and maintenance services

(a) Housekeeping and maintenance services necessary to maintain a sanitary and comfortable environment and laundering of personal clothing (excluding dry cleaning) shall be required.

10:63-2.20 Non-covered services

(a) Non-covered services in NFs shall include, but not be limited to, the following:

1. Admission or continued care primarily for diet therapy of exogenous obesity, bed rest, rest cure, or care of non-medical nature;

2. Private duty nursing;

3. Private attendant services;

4. Services and supplies not related to the care of the resident, such as guest meals and accommodations, television, telephone, and personal items;

5. Practitioner or therapy services furnished on a fee-for-service basis by an owner, partner, administrator, stockholder, or others having direct or indirect financial interest in the NF; or

6. Partial care services in independent clinics.

10:63-2.21 Special care nursing facility (SCNF)

(a) A special care nursing facility (SCNF) is a nursing facility or separate and distinct SCNF unit within a Medicaid-certified conventional nursing facility which has been approved by the Division of Medical Assistance and Health Services to provide care to New Jersey Medicaid recipients who require specialized nursing facility services beyond the scope of a conventional nursing facility as defined in N.J.A.C. 10:63-2. A SCNF or SCNF unit shall have a minimum of 24 beds.

1. The minimum bed requirement shall be waived for SCNFs that were approved by the Division prior to the adoption of this regulation. In addition, the requirement will be waived in those instances where a SCNF's Certificate of Need stipulates a specific number of beds approved by the New Jersey Department of Health.

2. A SCNF shall provide intensive medical, nursing and psychosocial management to the seriously ill individual who has potential for measurable and consistent maturation or rehabilitation, or has a technologically and/or therapeutically complex condition which requires the delivery of intensive and coordinated health care services on a 24 hour basis. Length of stay in a SCNF shall be determined by the individual's progress and the overall response to the therapeutic regimen.

(b) A SCNF shall provide the services of an interdisciplinary team, under the direction of a physician specialist, who has training and expertise in the treatment specific to the medical condition and specialized needs of the target population of the SCNF.

1. Within a focused, specialized therapeutic program, targeted, when appropriate, at timely discharge to alternative health care settings, such as conventional NF or community-based services, the SCNF shall provide:

i. Aggressive management and treatment to stabilize, improve and monitor current conditions;

ii. Appropriate, intensive rehabilitative therapies and counseling services; and

iii. Coordinated care planning and delivery of required services.

(c) A SCNF shall provide services to Medicaid recipients who have been determined, through the PAS process, to require extended rehabilitation and/or complex care.

1. Extended rehabilitation shall be considered for a medically stable individual with a subacute condition whose prognosis indicates the potential for rehabilitative progress which requires a prescribed period of therapeutic treatment and goal-directed services provided by a qualified interdisciplinary team to restore the individual to the highest practical level of the physical, cognitive and behavioral functioning. The individual may remain for a period of up to 12 months, with a review after six months. Length of stay will be extended for periods of six months, if continued benefit from the service can be demonstrated.

2. Complex care shall be considered for a medically stable individual judged to have plateaued who demonstrates the need for prolonged, technologically and/or therapeutically complex care. Although the rehabilitative component may be less intense, the individual continues to require focused assessment, coordinated care planning and direct services on a continuing basis provided by a interdisciplinary team with training and expertise in the treatment of the medical conditions and specialized needs of the resident population of the SCNF. The individual may remain for a period of up to 2 years with review every 12 months. Length of stay will be extended for periods of six months if continued benefit from the service can be demonstrated.

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3. Medicaid recipients who are suitably placed in the community, receiving care in appropriate alternative placements or referred for social reasons only shall not be authorized for admission to a SCNF.

(d) Discharge procedures shall include utilizing Medicaid discharge protocols established by N.J.A.C. 10:63, and the following:

1. The recipient shall be discharged upon achievement of maximum benefit from the specialized programming and maximum level of functioning and when the individual's condition can be appropriately managed in either the community or other forms of institutional care.

2. Outpatient treatment and supported community services may be needed to assist in community integration.

3. In the case of a recipient residing in a SCNF unit of a conventional NF, who is determined by Division staff to no longer require special programming, yet continues to require conventional NF services, such a recipient shall be accepted for placement into a conventional NF bed in the facility. If a conventional NF bed within the facility is not available within a reasonable time, the SCNF shall assist the individual in finding placement in another facility. The SCNF shall be afforded 30 to 60 days from then date of the determination to effect transfer of the recipient to a bed within the facilities conventional bed allocation or arrange transfer to another conventional NF.

(e) The SCNF shall provide all required services, as defined in this subchapter.

1. A SCNF shall provide those medical services as defined in N.J.A.C. 10:63-2.3, with the following modifications and/or additions:

i. A free-standing SCNF shall have a designated medical director who is board eligible/certified in a medical specialty as targeted by the medical diagnoses, medical conditions and/or resident population of the SCNF. The medical director shall also function as a primary care attending physician. If a speciality medical group provides medical services to the SCNF, a member of that group shall be designated as the medical director.

(1) In lieu of the requirements contained in i above, a free-standing SCNF may have a designated medical director who is a licensed physician and was serving as medical director prior to the effective date of these rules.

ii. For each resident there shall be a designated primary care physician specialist who is board eligible/certified in a medical specialty determined by the medical diagnoses, medical conditions and or resident population of the SCNF;

iii. Responsibilities of the primary care physician include but are not limited to:

(1) History, physical exam and diagnosis on admission and a comprehensive physical exam conducted on a yearly basis;

(2) Medical assessment shall reflect a correlation of the staging of existing diagnosis and premorbid conditions to the prognosis for rehabilitation.

(3) Each resident shall be examined and evaluated as required by the individual's condition as designated by the medical care plan.

2. A SCNF shall provide those nursing services as defined in N.J.A.C. 10:63-2.2 with the following modifications and/or additions:

i. A free-standing SCNF shall have a director of nurses or a nursing administrator who is a registered professional nurse in the State of New Jersey and possesses a Master's Degree or a Baccalaureate Degree in Nursing and has a minimum of two years experience as a nursing administrator or who has at least two years of supervisory experience in either an acute or long-term care setting.

(1) In lieu of (e)2i above, serve as director of nursing prior to the adoption of these regulations.

(2) A SCNF unit within a conventional NF whose director of nursing does not meet the qualifications of (e)2i above shall have a nurse manager who meets the qualifications assigned full time to the unit. The SCNF unit shall have six months from the date of adoption of these rules to comply with this requirement.

ii. Registered professional nurses certified in intravenous therapy shall be available on a twenty-four hour basis.

iii. Two and one-half hours of basic nursing services by registered professional nurses, licensed practical nurses and certified nurse aides as defined in N.J.A.C. 10:63-2.2. Additional nursing services up to a maximum of three hours may be provided due to technically complex nursing needs and/or intensive rehabilitative/restorative nursing care needs.

iv. Provision of additional nursing services (acuities) as defined in N.J.A.C. 10:63-2.2 does not apply to nurse staffing rules in a SCNF.

(1) Sixty percent of the additional hours of care under iii above shall be provided by registered professional nurses, and forty percent shall be provided by licensed practical nurses. There shall be a minimum of one registered professional nurse, one licensed practical nurse and one certified nurse aide on each shift.

v. Responsibilities of the nursing staff, in concert with other members of the interdisciplinary team, include, but are not limited to:

(1) Expertise and understanding of the physiologic impact, prognosis and treatment needs specific to the medical condition or specialized needs of the target population to enhance integration of the resident and family goals with adjustment and rehabilitation.

(2) Utilization and application of specialized equipment essential to provide services required for the care and treatment of the SCNF population.

(3) Comprehensive and coordinated program of restorative and rehabilitative nursing services to prevent complications and promote and/or restore the individual's physical, psychosocial function to a realistic level.

(4) Individual/family education and instruction of self care to promote optimum level of health in preparation for discharge to a less restrictive environment.

(5) Evaluation and management of moderate to extreme emotional and behavioral disorders related to illness.

3. A SCNF shall provide those social services as required by N.J.A.C. 10:63-2.6, with the following modifications and/or additions:

i. The social services coordinator shall possess a Master's Degree or Baccalaureate Degree in Social Work from a college or university accredited by the Council on Social Work and have at least two years of full time social work experience in a health care setting.

ii. An average of at least 50 minutes of social work services per week for each resident. This is equal to one half-time equivalent social worker for every 24 residents.

iii. In a SCNF with more than 48 beds, one of the direct care social workers shall be designated as the Director of Social Services.

iv. Responsibilities of the social service staff, in concert with other members of the interdisciplinary team, include, but are not limited to:

(1) Knowledge of alternative care programs and resources in the community to assist the resident/family with appropriate discharge planning.

(2) Maintain a library of information and resources pertinent to the resident's diagnosis, educational/vocational training needs and applications to community based programs.

(3) Facilitate on-going collaboration and coordination among health care providers, the resident and the family to promote long-range social and health care planning.

(4) Coordinate SCNF programming with community-based resources to facilitate continuity of care and assimilation into community/family environment.

(5) On-going supportive intervention with the resident/family in dealing with the confusion, anger, fear, depression, guilt and conflict associated with illness.

4. A SCNF shall provide resident activities required by N.J.A.C. 10:63-2.5, with the following modifications and/or additions:

i. The director of resident activities shall possess a Master's Degree or Baccalaureate Degree from an accredited college or university with a major area of concentration in recreation, creative arts therapy, occupational therapy or therapeutic recreation. In addition, three years of experience in a clinical, residential or community-based therapeutic recreation program is required.

(1) In lieu of (e)4i above, serve as director of resident activities prior to the adoption of these rules.

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ii. An average of at least 100 minutes of resident activity services per week for each resident. This is equal to one full-time equivalent resident activities staff for every 24 residents. This staff person shall serve as the Director of Resident Activities.

iii. For each additional 24 beds, the facility shall provide the services of a full-time resident activities assistant.

iv. Responsibilities of the resident activities staff, in concert with other members of the interdisciplinary team, shall include, but are not limited to:

(1) Utilization of all possible community, social, recreational, public and voluntary resources to promote the resident's ties with community life.

(2) Provision of therapeutic resident activities which endorse the therapeutic plan of care.

(3) Incorporation of family-centered activities which provide a supportive, therapeutic environment to give residents and families an opportunity to work together toward achieving common goals.

5. A SCNF shall provide, directly in the facility, the rehabilitation services as required by N.J.A.C. 10:63-2.4 on an intensive level which are specifically targeted to meet the goals of the prescribed treatment plan.

i. Rehabilitative therapies shall include, but shall not be limited to:

(1) Physical therapy;

(2) Occupational therapy;

(3) Speech/language pathology; and

(4) Cognitive or remedial therapies (including neuropsychological treatment)

ii. Rehabilitation services shall focus on developing and/or restoring maximum levels of function within the limits of the resident's impairment. Through collaboration with other members of the interdisciplinary team, a comprehensive rehabilitation plan shall be developed which:

(1) Identifies rehabilitation needs and establishes realistic criteria for measuring the need for continued rehabilitative services;

(2) Projects targeted outcomes (goals) and defines the parameters to measure response to treatment goals; and

(3) Establishes realistic time frames to meet outcome criteria.

6. Mental health services provided by a licensed psychiatrist, psychologist or other appropriately credentialed professional shall be provided to residents with mental health disorders in accordance with N.J.A.C. 10:63-2.9.

7. A SCNF that provides ventilator management of New Jersey Medicaid eligible children or adults, shall provide respiratory therapy services beyond the scope of N.J.A.C. 10:63-2, which shall include, but not be limited to:

i. A respiratory care practitioner who is currently licensed by the New Jersey State Board of Respiratory Care be available on the premises on a 24 hour basis.

ii. Respiratory life support systems must be provided inclusive of, but not limited to:

(1) Mechanical ventilators (pressure/volume/time cycled), (portable/stationary); and

(2) Oxygen therapy delivery systems.

iii. Administration of medically prescribed respiratory care which includes, but is not limited to:

(1) Nasopharyngeal aspiration;

(2) Maintenance of natural and mechanical airways;

(3) Insertion and maintenance of artificial airways;

(4) Aerosol treatment;

(5) Administration of nebulized bronchodilators;

(6) IPPB;

(7) Oxygen therapy;

(8) Mechanical ventilation with/without supplemental oxygen;

(9) Monitoring of blood gases;

(10) Under the direction of the pulmonologist, the respiratory therapist applies weaning parameters and provides direct supervision during the weaning process;

(11) Postural drainage and chest percussion; and

(12) Breathing exercise and respiratory rehabilitation.

SUBCHAPTER 3. COST STUDY, RATE REVIEW GUIDELINES AND REPORTING SYSTEM FOR LONG-TERM CARE FACILITIES

[FOREWORD]

10:63-3.1 Purpose and scope

(a) These [regulations] **rules** describe the methodology [("guidelines")] to be used by the State of New Jersey to establish prospective per diem rates for the [providing] **provision** of [routine care to patients] **nursing facility services to residents** under the State's Medicaid program. These [guidelines] **rules**have been developed jointly by the State Department of Human Services and the State Department of Health ("the departments").

(b) The departments believe that the strict application of these [guidelines] **rules** will generally produce equitable rates for the payment of [long-term care facilities (LTCF's)] **nursing facilities (NFs)** [of] **for** the reasonable cost of providing routine patient care services. The departments recognize, however, that no [set of guidelines] **rules** can be developed which might not result in some inequities if applied rigidly and indiscriminately in all situations. Inequities could be in the form of rates that are unduly low or rates that are unduly high.

(c) Accordingly, in the case where a [LTCF] **NF** believes that, owing to an unusual situation, the application of these [guidelines] **rules** results in an inequity, the departments are prepared to review the particular circumstances with the [LTCF] **NF**. Appeals on the grounds of inequity should be limited to circumstances peculiar to the [LTCF] **NF** affected. They should not address the broader aspects of the [guidelines] **rules** themselves.

(d) On the other hand, these [guidelines] **rules** are not purported to be an exhaustive list of unreasonable costs. Accordingly, notwithstanding any inference one may derive from these guidelines, the departments reserve the right to question and exclude from any unreasonable costs, consistent with the provision of N.J.S.A.30:4D-1 et seq.

(e) All rates established pursuant to these [guidelines] **rules** will be subject to onsite audit verification of costs and statistics reported by [LTCF's] **NFs**.

(f) [These revised guidelines in the long-term care facility] **The nursing facility** reimbursement [formula] **formulae contained in this subchapter** have been developed to meet the following overall goals:

1. To comply with Federal requirements that rates are reasonable and adequate to meet the cost that efficiently and economically operated facilities must incur to provide care in conformity with applicable State and Federal laws, **rules,** regulations and quality and safety standards.

2. To provide sufficient incentive to attract [long-term care facility] **nursing facility** investment, thereby reducing the reported Medicaid bed storage; and

3. To end opportunities for excessive property cost reimbursement.

10:63-[3.1]**3.2** Timing

(a) Commencing with fiscal year ending with November 30, 1977, [LTCFs are to] **NFs shall** furnish required cost studies to the Department of Health, Health [Economics Services] **Facilities Rate Setting** within 90 days of the close of each fiscal year. For rate review purposes, the period for which these actual data are reported will constitute the "base period" for establishing prospective per diem reimbursement rates commencing six months after the end of the base period. These rates will not be subject to routine retroactive adjustments except for matters specified in [the Guidelines] **this subchapter**. As required by Federal Regulations at 42CFR 447.304, prospectively determined payment rates will be redetermined at least annually.

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

(d) The Director, Division of Medical Assistance and Health Services, may mitigate or waive the penalties specified in (b) above, for "good cause" shown:

1. "Good cause" shall include but shall not be limited to, circumstances beyond the control of the [long-term] **nursing** care facility, such as fire, flood or other natural disaster;

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2. Acts of omission and/or negligence by the [long-term] **nursing** facility, its employees, or its agents, shall not constitute "good cause" for waiving the penalty provisions;

3. All requests for mitigation and/or waiver of the penalty provisions must be submitted in writing, and accompanied by such documentation and/or supporting affidavits as the Director may require.

(e) The penalty rates indicated in (b) above will be applied to cost studies commencing with the reporting periods ending May 31, 1980.

10:63-[3.2]**3.3** Rate components

(a) The prospective rates will be "screened" CFA rates per day calculated by applying standards and reasonableness criteria ("screens") for [two] **three** classes [LTCFs] of **NFs**:

1. Class I Proprietary and Voluntary [LTCFs] **NFs**:

2. Class II Governmental [LTCFs] **NFs**:

i. To qualify as a Class II Governmental [LTCF] **NF**, the [LTCF must] **NF shall** meet all of the contractual requirements of the Division of Medical Assistance and Health Services and be a governmental operatiom.

3. Class III (Special Care) Nursing Facilities (SCNFs)

i. To qualify as a SCNF, the NF shall meet all of the contractual requirements of the Division of Medical Assistance and Health Services and be approved by the Division as a SCNF.

ii. SCNFs shall be grouped by the following types for separate screening purposes:

(1) Ventilator/Respirator;

(2) TBI/Coma;

(3) Pediatric;

(4) HIV;

(5) Neurologically Impaired (NIP); and

(6) Behavioral Management.

(b) (No change.)

(c) Reimbursement for therapy services will be made as follows:

1. For Class I and Class II programs, reimbursement will be made for physical, speech, and occupational therapy services to Medicaid patients for treatments which are not reimbursable by any other third party payor.

i. A per diem will be calculated for each facility by multiplying the number of otherwise unreimbursable base period Medicaid patient therapy sessions by $7.00 and dividing the product by the total number of base period Medicaid patient days.

2. For Class III programs, all therapy costs for other than respiratory therapy will be reimbursed by a per diem, calculated by dividing total base period therapy costs for Medicaid patients (less recoveries for medicaid patients) by total base period Medicaid patient days for each facility.

3. Respiratory therapy will be reimbursed to all Class III programs with respiratory therapy costs subject to a reasonableness limit determined for all Class III programs providing respiratory therapy services. The limit will originally be calculated at 150 percent of the median per diem respiratory therapy cost per diem for ventilator patients in the base period. When the calculation of the respiratory therapy services cost limit includes one full year of costs for all Class III NFs under the regulations implementing Class III cost limits, the limit will thereafter be calculated at 120 percent of the median respiratory therapy cost per diem. Class III programs without reported costs will be excluded from the calculation of this limit.

(d) The development of the "screens" for Class I, Class II, and Class III NFs includes the governmental NFs' and SCNFs' reported costs and statistics in the following areas:

1. Administrator;

2. Assistant administrator; and

3. Median days per bed.

(e) Administrator and assistant administrator screens determined by (d) above, for NFs which combine Class I or Class II, and Class III programs will be allocated in the ratio of applicable (that is, Class I or Class II or Class III) patient days to the total NF patient days.

(f) The screen for each cost component of a Class III NF administered by a governmental facility will be the screen established for the Class III NF and not the Class II governmental screen.

[(c)]**(g)** (No change in text.)

[d]**(h)** All lease costs incurred as a result of related party transaction, will be excluded for reimbursement purposes.

1. A "related party" is defined in the "CARE" guidelines under Schedule F as:

i. (No change.)

ii. An individual:

(1) (No change.)

(2) Who has a beneficial interest of 10 percent or more in an entity related by [(d)]**(h)**1i(2) or (3) above; or

(3) Who is a relative of an individual who is related by the definition in [(d)]**(h)**1ii(1) or (2) above;

(4) (No change.)

[(e)]**(i)** (No change in text.)

(j) Any legal expenses and related fees associated with any action initiated by the facility that is dismissed on the basis that no reasonable ground existed for the institution of such action will be excluded for reimbursement purposes.

10:63-[3.3]**3.4** (No change in text.)

10:63-[3.4]**3.5** Raw food costs

(a) Raw food costs per patient day for voluntary and proprietary [LTCF's] **NFs** which provide their own food service and which had over 20 percent Medicaid patient days in the base period will be determined. [LTCF's] **NFs** which contract for their dietary operations will be excluded. These per diem costs will be ranked in descending order on a Statewide basis. The reasonableness limit will be set at 120 percent of the median cost per day.

1. Governmental [LTCFs] **NFs** which provide their own food service and which had over 20 percent Medicaid patient days in the base period will be ranked separately and the reasonableness limit will be set at 120 percent of their median cost per day.

2. SCNFs which provide their own food service will be ranked separately for each type of Class III NF and a reasonableness limit for each type will be set at 120 percent of the median cost per day.

(b) For [LTCF's] **NFs** below this limit, prospective rates will be based upon actual costs. Where homes report unit costs 15 percent or more below the median, the Department of Health, Health Facilities Inspection, will be asked to inspect the food operations for compliance with State standards.

(c) For [LTCF's] **NFs** above this limit, the excess of actual raw food costs will be added to other general service expenses and subjected to a screen of the combined total as described in N.J.A.C. 10:63-3.5. Accordingly, a credit may be applied to excess raw food costs if non-food general service costs are below the reasonable limit where an excess raw food costs is indicated. Any such credit is limited to amount of raw food cost excess.

10:63-[3.5]**3.6** General service expenses

(a) (No change.)

(b) The bases for screen development and reported costs subject to applicable screens, are as follows:

1. (No change.)

2. Administrator: Reasonable compensation of unrelated administrators as determined by the regression analysis formula utilized by the Department of Health, [Division of] **Health** Facilities Rate Setting.

i. The regression will utilize as variables: fringed salaries of unrelated administrators and facility bed size. The constants resulting from the regression formula will then be used in the following formula to produce reasonableness limits for each long term care provider

$$\frac{x + y}{\text{Median Days Per Bed}} \times \text{[LTC] NF Patient Days} \times 1.1 = \text{Limit}$$

x = Salary constant from regression

y = Per bed salary constant from regression

1.1 = 10 percent Uniqueness factor

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ii. The administrator screen will be applied to the aggregate reported costs of management, administrator, and assistant administrator, for facilities with less than 100 licensed [long-term care] **nursing facility** beds.

iii.-iv. (No change.)

3. Assistant Administrator: Limited to 125 percent of median unrelated assistant administrator compensation.

i. This cost category will apply only to facilities which exceed 99 licensed [long-term care] **nursing facility** beds.

4. (No change.)

5. Reasonableness limits for other general services category will be established at:

i. 105 percent of median costs as reported by [proprietary and voluntary] **Class I** facilities which had over 20 percent Medicaid patient days.

ii. 105 percent of median costs as reported by [governmental] **Class II** facilities which had over 20 percent Medicaid patient days.

iii. 105 percent of median costs for each type of Class III program as reported by SCNFs.

6. The level of reasonableness for legal fees will be established at:

i. 250 percent of median costs of [proprietary and voluntary] **Class I and Class III** facilities which had over 20 percent Medicaid patient days or that per diem value which recognizes no greater than 80 percent of reporting [proprietary and voluntary] **Class I and Class III** [long term care facilities] **NFs** which had over 20 percent Medicaid days.

ii. 250 percent of median [reported] costs of [governmental] **Class II** facilities which had over 20 percent Medicaid patient days or that per diem value which recognizes no greater than 80 percent of reporting [governmental] **Class II** [long term care facilities] **NFs** which had over 20 percent Medicaid days.

7.-8. (No change.)

10:63-[3.6]**3.7** Property operating expenses

(a) Property operating expenses include property taxes and utilities.

1. (No change.)

2. For this purpose, reasonable plant square feet (and related property taxes) for voluntary and proprietary [LTCFs] **NFs** will be determined as follows:

i. The ratio of plant square feet to licensed beds will be determined for all proprietary and voluntary [LTCFs] **NFs**;

(1) (No change.)

(2) Which had at least 20 percent Medicaid patient days in the base period.

(A) Reasonable plant square feet for governmental [LTCFs] **NFs** will be determined separately as in N.J.A.c. 10:63(a)1 above.

(B) Reasonable plant square feet for Class III NFs will be determined as in (a)2 above.

ii. This ratio will establish the "normal" plant square feet for a [LTCF] **NF** with a given number of licensed beds.

iii. The reasonableness limit for each [LTCF's] **NF's** plant square feet will be established at 110 percent of the norm for its licensed beds. (see N.J.A.C. 10:63-[3.10]**3.11** for [LTCF's] **NFs** with residential or sheltered care patients).

3. For [LTCF's] **NFs** whose plant square feet exceeds this limit, the property taxes related to the excess will be excluded from the rate base. For this purpose, it will be assumed that assessed values for buildings vary directly in relation to their areas. The latitude set forth in paragraph 2iii of this subsection is intended to provide for inequities that could result from this assumption. The department will review on an individual basis, any additional inequities which owners believe are brought about by unusual circumstances.

4. For [LTCF's] **NFs** whose Department of Transportation (D.O.T.) appraised value per plant square foot is greater than 110 percent of the median construction costs at 1977 price levels, the property taxes attributable to the excess will be excluded from the rate base unless the owners can demonstrate unusual circumstances. For screening new [LTCF's] **NFs**, this figure will be revised each year for inflation and for effects of standards changes upon construction cost. (See N.J.A.C. 10:63-[3.10]**3.11** for the methodology for calculating this limit at 1977 price levels.)

5. Reasonable land area (and related taxes) is established as follows:

i. For urban [LTCF's] **NFs** two acres;

ii. For nonurban [LTCF's] **NFs** five acres;

iii. (No change.)

6. (No change.)

7. After making any adjustments per (a)6 above, taxes bases upon land appraisals in excess of 140 percent of the median appraisal value of five acres, rural and two acres, urban of all [LTCF's] **NFs** in the county will also be considered unreasonable. In the case of counties with fewer than five [LTCF's] **NFs** neighboring counties may be combined in determining the median value to be used.

8. (No change.)

(b) As noted in the instructions for the submission of cost studies, where a lessor is paying the property taxes, the actual property taxes paid by the lessor are to be reported by the [LTCF] **NF** operator as a property tax expense and deducted from the amount reported as rent. The property tax component of such leases will be subject to the above screens.

(c) Utility costs will be screened for reasonableness as follows:

1. Base period utility costs per bed will be deemed apparently unreasonable to the extent that they exceed 150 percent of the Statewide median cost per bed, as determined for each class/type of [LTCF] **NF** indicated in N.J.A.C. 10:63-[3.2]**3.3**.

i. (No change.)

10:63-[3.7]**3.8** Special amortization

(a) (No change.)

(b) In approving the amortization of special expenditures, the departments will also consider the extent to which a [LTCF's] **NF's** rates are based on capital and cost levels of fully complying [LTCF's] **NFs**.

10:63-[3.8]**3.9** Routine patient care expenses

(a) (No change.)

(b) Reasonableness limits for nursing services (RN's, LPN's and other) will be established as follows:

1. The minimum nursing requirements in terms of hours worked will be calculated for each [nursing facility] **Class I and Class II NF** based upon the case mix patient classification (see N.J.A.C. 10:63-[3.19]**3.20**(a)5ii) and standards in effect during the base period, except that, beginning October 1, 1990, minimum nursing requirements in terms of hours shall be calculated for each nursing facility based upon:

i.-iv. (No change.)

2. The minimum nursing requirements in terms of hours worked will be calculated for each Class III program as follows:

i. A base of 2.5 hours per patient day (20 percent RNs and LPNs; 80 percent Aides);

ii. An additional three hours per patient day (60 percent RNs, 40 percent LPNs);

iii. The total minimum hours per year for each type of nurse will be at least 8,760 (that is, allowing staff of one RN, LPN and Aide on each shift.

[2.]**3.** The percentage of hours paid for vacations, holidays, illness, and so forth (hours paid but not worked) to hours worked, will be ranked in descending order for all proprietary and voluntary NFs in the State. **Separate rankings will be developed for governmental NFs and each type of SCNF.** The percentage for the median NF for each class of facility will be selected as the Statewide norm for the percentage of hours paid but not worked for that class of facility.

[3.]**4.** The hours developed in (b)1i-iv **and (b)2i-iii** above will be incremented by [this] **the applicable** percentage **for each class of NF**.

[4.]**5.** The average equalized hourly compensation rate of each type of nurse (see N.J.A.C. 10:63-[3.3]**3.4**) will be calculated **separately** for [each class of] **Class I, Class II, and each type of Class III** facility.

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i. The average equalized compensation rate for the median NF for each classs/**type** of NF will be selected as the norm for the State.

[ii. A separate calculation will be made for governmental facilities.]

[5.]**6.** The compensation rates for each class/**type** of facility will be multiplied by the paid hours developed in [(b)3]**(b)4** above for each [(type)] **type** of nurse and aggregated for all three types[.] **of nurses.**

[6.]**7.** The reasonableness limit for total nursing care will be established at 115 percent of this total **for Class I and Class II facilities and 125 percent of this total for Class III facilities**, in order to allow for variations in staffing patterns, mix of nursing personnel, and so forth. This total will be adjusted for timing differences to each NF's base period.

(c) Reasonableness limits for the below listed special patient care services other than nursing will be established for each class of [LTCF] **NF**.

1. (No change.)

(d) Reasonableness limits for medical supplies and patient activities will be established: [150 percent of the median per diem cost for each class of LTCF which had over 20 percent Medicaid days in the base period.]

1. 150 percent of the median per diem cost of Class I NFs which had over 20 percent Medicaid days in the base period.

2. 150 percent of the median per diem cost of Class II NFs which had over 20 percent Medicaid days in the base period.

3. 150 percent of the median per diem cost for each type of Class III NF, excluding any facility without reported costs.

(e) Reasonableness limits for [special patient care services other than medical supplies and patient activities] **medical director, pharmaceutical consultant, non-legend drugs, social services and oxygen** will be established at: [110 percent of the median per diem cost for each class of LTCF which had over 20 percent Medicaid days in the base period.]

1. 110 percent of the median per diem cost of Class I NFs which had over over 20 percent Medicaid days in the base period.

2. 110 percent of the median per diem cost of Class II NFs which had over over 20 percent Medicaid days in the base period.

3. 110 percent of the median per diem cost for each type of Class III NF, excluding any facility without reported costs.

(f) Where actual base period costs for routine patient care are below the limits established, the actual costs will be included in the rate base. The Department of Health, Health Facilities Inspection, will be notified of all cases where a [LTCF's] **NF** patient care costs per day are less than 75 percent of the limits in N.J.A.C. 10:63-3.8(b)6 and of all cases where nursing hours worked appear to be below State standards.

10:63-[3.9]**3.10** Property—Capital Costs (including Return on Investment (ROI))

(a) Included in this category are the following rate components:

1.-8. (No change.)

9. Fees and other expenses incurred in financing or refinancing of the [LTCF] **NF** itself or any of its assets.

(b) The [guidelines] **rules** 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 individuals [LTCF's] **NFs** are financed and constructed or the arrangements under which they are acquired or leased.

2. While not concerning themselves about the costs, financing and so forth, of individual [LTCF's] **NFs** the departments mandate with respect to the reasonableness of cost requires it to develop this rate component upon the presumption of reasonable facility costs and prudent financing [or leasing arrangements].

3. Private capital should be attracted into the industry with a reasonable rate of return, which should recognize that:

i. The existence of the certificate of need process to control the supply of [LTCF's] **NFs** in relation to demand, removes several risks inherent in most free enterprise situations.

ii. (No change.)

(c) The departments believe that the above objectives can best be met by establishing an aggregate "capital facilities allowance" (CFA) which would replace all of the rate components noted above.

(d) The following considerations will be addressed in determining the CFA:

1. Buildings (see [section 10 of this subchapter] **N.J.A.C. 10:63-3.11**);

2. Land and land improvements (see [section 11 of this subchapter] **N.J.A.C. 10:63-3.12**);

3. Equipment (routine moveable) (see [section 12 of this subchapter] **N.J.A.C. 10:63-3.13**);

4. Maintenance and replacements (see [section 13 of this subchapter] **N.J.A.C. 10:63-3.14**);

5. Property insurance (see [section 14 of this subchapter] **N.J.A.C. 10:63-3.15**);

6. Economic occupancy level (see [section 15 of this subchapter] **N.J.A.C. 10:63-3.16**).

10:63-[3.10]**3.11** Buildings

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

(c) Reasonableness limits on plant square feet will be set at 110 percent of the median plant square feet per available bed of all proprietary and voluntary [LTCFs] **NFs** which had over 20 percent Medicaid patient days in the base period. Separate reasonableness limits will be developed for governmental [LTCFs] **NFs** by the same method. [LTCFs] **NFs** not substantially complying with current State and Federal space requirements or carrying space waivers will be excluded from this calculation.

(d) A reasonableness limit on appraised value per square foot will be established at 110 percent of the median appraised values, at 1977 price levels, of proprietary and voluntary [LTCFs] **NFs** which had over 20 percent Medicaid days in the base period. **The limit for Class I NFs will also be applied to Class III NFs.** A separate reasonableness limit will be developed for governmental [LTCFs] **NFs** by this method.

(e) (No change.)

(f) Two rates will be developed for calculating the CFA for [LTCF's] **NFs**:

1.-2. (No change.)

(g) For the first 25 years of the life of a [LTCF] **NF** 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) (No change.)

(i) For [LTCF's] **NFs** built-in multiple stages, a weighted average year of original construction will be established by weighing licensed beds by the age of the component multiple stages of the building in which the beds are located. Where inequities could result from this calculation, homes with suitable records may request that the weighted average year of construction be calculated based upon plant square feet constructed.

(j) For [LTCFs] **NFs** with residential and/or sheltered care patients, data relative to common areas will be apportioned to nursing patients based upon base period licensed beds. After making such apportionments, appraised values will be subject to the reasonableness screens described in (c), (d) and (e) above and, where applicable, to the weighted average year of construction calculations described in (i) above. This proration will not be redetermined for subsequent years in the absence of significant changes in facilities or in patient mix.

(k) For LTCF's **NFs** which were converted to [nursing LTCF's] **NFs** [uses] **use** from other uses, the year of conversion will be used provided the conversion cots exceeded the acquisition cost of the building and building equipment. Otherwise, the original year of construction will be used.

(l) For existing [LTCF's] **NFs** 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

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based upon the lower of the previously established Medicare return on equity rate or the available financing rate incremented in accordance with the Medicare return on equity factor.

(m) For new [LTCF's,] **NFs** or for additions to existing [LTCF's,] **NFs** 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) The departments will review, on an individual basis, situations where the strict application of the provisions of this section would be inappropriate under particular circumstances, such as:

1. Situation where an existing debt must be refinanced in connection with obtaining funds to expand existing [LTCFs;] **NFs**;

2. The inability of [LTCF's] **NFs** to obtain 25-year financing.

(o) With respect to new [LTCF's] **NFs** and significant additions to existing [LTCF's] **NFs,** the appraised value will be determined based upon price levels at the time the construction is completed.

(p) Expenses incurred by [LTCF's] **NFs** in obtaining financing through a governmental authority may be allowable. 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]**3.8**(a) and (b).

10:63-[3.11]**3.12** Land

(a) The 1977 value of land and land improvements as appraised by the State Department of Transportation will be 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]**3.7**, with respect to:

1. Reasonable land area;

2. The total reasonable appraised value of reasonable land area.

(b) The interest rate developed per N.J.A.C. 10:63-[3.10]**3.11**(f) will be applied to the reasonable 1977 appraised value.

(c) The provisions of N.J.A.C. 10:63-[3.10]**3.11**(l) through (p) will also apply to CFA for land in years subsequent to 1977.

(d) (No change.)

10:63-[3.12]**3.13** Movable equipment

(a) The moveable equipment allowance will be based upon the median requirements per bed at 1977 price levels. This median will be determined by:

1. Selecting new [LTCF's] **NFs** built since 1969 which had over 20 percent Medicaid days in the base period.

2. Incrementing their original expenditures for moveable equipment to 1977 price levels by applying an appropriate index of inflation in equipment costs.

3. Converting these inflated expenditures to cost per bed and ranking Statewide.

(b) The allowance per licensed bed will be determined by applying to this median cost the interest rate developed per N.J.A.C. 10:63-[3.10]**3.11**(f), (l), (m).

(c) Inasmuch as this allowance will be based upon the current replacement cost of new equipment, it will be deemed to provide for unusually large expenditures for maintaining old equipment (the departments consider it to be purely a management prerogative as to when to replace, rather than repair, old equipment). A provision for ongoing routine equipment maintenance and replacements will be included in the maintenance and replacements allowance as described in N.J.A.C. 10:63-[3.13]**3.14**.

10:63-[3.13]**3.14** Maintenance and replacements

(a) An allowance for the maintenance of land, land improvements, building and equipment and for replacement of equipment will be developed for [each LTCF] **Class I and Class II facilities and each type of Class III facility** as follows:

1. Expenditures for this purpose in the base period for [each class of LTCF] **Class I, Class II and each type of Class III of NF** which had over 20 percent Medicaid days in the base period will be adjusted to price levels at the midpoint of the base period through the application of the inflation factor to reported costs for fiscal years ending prior to December. **Class III NFs will not be excluded due to percentage of Medicaid days.**

2. Homes which were substantially expanded or remodernized during this period will be excluded from calculations described in [paragraph] **(a)**3 below.

3. For the remaining [LTCFs] **NFs**, maintenance and replacement costs per plant square foot at base period price levels will be calculated for each class of [LTCF] **NF**. Mathematical techniques will be used to determine a general formula describing the relationships between expenditures per plant square foot for maintenance and replacements and factors such as age of buildings, estimated building replacement costs, and so forth.

4. The 15 percent highest and 15 percent lowest extremes in actual expenditures compared with this general formula will then be removed from further calculations[.], **except for Class III NFs.** The same mathematical techniques will then be applied to the remaining 70 percent of the data to develop the formula to be used to calculate a reasonable allowance for each class of [LTCF] **NF** for maintenance and replacement.

5. Seventy percent of the costs of leasing equipment will be recognized as "maintenance and replacement" costs.

6. Each [LTCFs] **NF's** maximum total allowance per reasonable plant square foot for any one year will developed by applying this formula to its particular factors and incrementing the result by 10 percent. No allowance will be provided for plant square feet considered unreasonable per N.J.A.C. 10:63-[3.6(a)1.-2.]**3.7(a)1 and 2.**

7. Base period expenditures in excess of this maximum allowance may be carried forward and applied in future years in which expenditures are below their respective maximum allowances.

i. Actual expenditures that are below the limits for the base period, may be carried and applied to excess expenditures in subsequent years. The following example illustrates how two typical [LTCFs] **NFs** would be affected.

YEAR No. 1	[LTCF]NF A	[LTCF]NF B
Actual expenditures	$130.00	$ 80.00
Limit	100.00	100.00
Excess (savings carried forward)	$ 30.00	$ 20.00
YEAR No. 2 [LTCF]NFA	EXAMPLE 1	EXAMPLE 2
Actual expenditures	$ 60.00	$ 85.00
Carried forward	+30.00	+30.00
Total eligible	$ 90.00*	$115.00
Limit	$105.00–$105.00*	
Carried forward to Year No. 3	$ 15.00	$ 10.00
YEAR No. 2 [LTCF]NF B	EXAMPLE 1	EXAMPLE 2
Actual expenditures	$120.00	$130.00
Limit	$105.00	$105.00
Plus Carried Forward	+20.00	+20.00
Revised limit	–125.00	–125.00*
Carried forward to Year No. 3	$ (5.00)	$ 5.00

*Included in rates

8. Expenditures for replacements, capitalized maintenance and leases will be prorated to nursing patients, based upon the ratio of nursing square feet (including a prorated of common areas) to total plant square feet.

10:63-[3.14]**3.15** Property insurance

(a) An allowance for property insurance will be developed for each home as follows:

1. Base period property insurance costs per dollar of appraised value and per dollar of 1977 replacement costs will be calculated for all [voluntary and proprietary LTCFs] **Class I NFs.** [A separate] **Separate** calculations will be made for [governmental facilities.] **Class II facilities and each type of Class III facility.**

2. Mathematical techniques will be applied to [these] **this** data to develop formulas describing the normal relationships between property insurance costs and appraised values and estimated replacement costs. Separate formulas will be develpoed for urban and non urban [LTCF's] **NFs.**

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3. The procedures described in N.J.A.C. 10:63-[3.13 of the proceeding section] **3.14** will be used to eliminate extremes and to develop the formula to be used to calculate the reasonableness limit for property insurance, **except for the calculation of Class III limits.**

4. Each [LTCFs] **NF's** reasonableness limit per reasonable plant square foot will be developed by applying this formula to its patic-particular factors and imcrementing the result by 10 percent. No allowance will be provided for plant square feet considered unreasonable per N.J.A.C. 10:63-[3.6(a)1.-2]**3.7(a)1 and 2.**

10:63-[3.15]**3.16** Target occupancy levels

(a) (No change.)

(b) For Class III NFs, if the base period Medicaid occupancy is 80 percent or greater, the target occupancy for the rate components in (a) above will be 90 percent.

[(b)]**(c)** The per diem amounts for all other expenses will be based upon reasonable base period costs divided by actual base period patient days.

[(c)]**(d)** For new **Class I and Class II** facilities an occupancy rate of 80 percent will be used for provisional rates during the first year of [its] operation subject to retroactive adjustments to actual occupancy should it exceed 80 percent (but no higher than 95 percent will be used).

(e) For new Class III NFs, an occupancy rate of 80 percent will be used for provisional rates during the first year of operation. The retroactive adjustment from an interim to an actual rate for the first year of operation shall use actual occupancy should it exceed 80 percent (but no higher than 95 or 90 percent will be used as determined by (a) or (b) above.

10:63-[3.16]**3.17** Restricted funds

(a) Where donor restricted funds have been expended for operating purposes and, accordingly have been reported as an expense recovery/elimination, the availability and use of such funds will not be taken into account in establishing rates to the extent that they produce actual unit costs below the median unit costs and [LTCF's] **NF's** developed for determining reasonableness. (It should be noted that the availability or use of such funds will not be taken into account at all with respect to CFA calculations.)

(b) (No change.)

10:63-[3.17]**3.18** Adjustments to base period data

(a) (No change.)

2. [LTCF's] **NFs** may also request that cost in addition to base period expenditures be included in the prospective rates owing to:

i.-ii. (No change.)

3. With respect to requests for management changes, the departments will take the position that it is not a prerogative of a rate setting body to unilaterally make or amend social policies, especially with respect to the appropriateness of current allocations of State resources to the care of indigent [LTCF] **NF** patients. Accordingly, in the absence of other compelling reasons, management changes will be approved only in areas where quality has been found to be marginal by health facility inspection and actual costs are commensurately low.

4. Where legal and management changes have been approved and the approved costs are not expended in the prospective rate period, the unspent amount will be recovered from the [LTCF] **NF.**

5.-6. (No change.)

10:63-[3.18]**3.19** Inflation

(a) A provision will be added to reasonable base period costs to provide for inflation/deflation between the base period and the prospective rate period. Changes in two factors will be used to develop this provision.

1. (No change.)

2. The (consumer price index) **Consumer Price Index** as published by the Bureau of Labor Statistics (weighted 40 percent).

(b) This inflation factor will be developed by the Division of Medical Assistance and Health Services and the Department of Health, [Division of] **Health** Facilities Rate Setting.

(c) Should the economic factor as developed for hospitals include a provision for changes in legally mandated fringe benefits, a similar provision will be included in prospective nursing [LTCF] **NF** rates.

(d) If, for reasons beyond the control of a [LTCF], **NF** rates have not been redetermined within three months after receipt of its reports, an interim adjustment for inflation may be made to existing rates for cash flow purposes. The inflation increment would be based upon the number of months from the midpoint of the current rate period to the beginning point of the new rate period. The interim rate will be subject to a retroactive adjustment to the beginning of the prospective rate period upon determination of the approved rate via the methodology described in these guidelines.

(e) [LTCF's] **NFs** may also request interim adjustments to rates during a prospective rate period for either legally mandated matters or for extraordinary factors beyond their control. Such adjustments, if approved, would not apply retroactively unless, for reasons beyond the control of the [LTCF] **NF**, costs are affected retroactively.

(f) No provision for inflation will be made with respect to costs for buildings, land, moveable equipment, interest and lease, nor to special amortization.

10:63-[3.19]**3.20** Working capital provision and total rates

(a) Following the additions of the provision for inflation (N.J.A.C. 10:63-[3.18]**3.19**), and approved legal and approved legal land management changes, a working capital provision will be added to rates as follows:

1. The State's planned timetable for reimbursing [LTCF's] **NFs** for the care of Medicaid patients will be converted into an average expected days of accounts receivable.

2.-4. (No change.)

5. The nursing care component of the rates shall be adjusted six months after the effective date of each facility's prospective rate (see N.J.A.C. 10:63-[3.1]**3.2**) in order to allow for changes (if any) in the patient mix of each facility related to additional services requiring additional minimum nursing time. This adjustment shall be based upon the patient mix, as reported monthly by each facility, during a six month period ending three months prior to the effective date of the adjustment. Each facility shall maintain an individual patient classification form for each patient to record additional minimum nursing services required under N.J.A.C. 8:39-25.2(b).

i.-iii. (No change.)

10:63-[3.20]**3.21** Appeals process

(a) When a [LTCF] **NF** believes that, owing to an unusual situation, the application of these guidelines results in an inequity, two levels of appeals are available; a Level I Appeal heard by representatives from the Department of Health and Department of Human Services; and a Level II Appeal heard before an Administrative Law Judge.

1. Level I Appeal: A request for a Level I appeal should be submitted in writing to the Department of Health, Health [Economic Services] **Facilities Rate Setting,** Health and Agriculture Building, Room 600, John Fitch Plaza, CN-360, Trenton, New Jersey, 08625. Requests for Level I appeals will be considered timely filed if they are submitted within 30 days of receipt of the notification of rates.

i. The first level of appeal will be heard by analysts from the Department of Health, and supervisory-level representatives from both the Department of Health and the Department of Human Services, as required. [LTCF's] **NFs** should be prepared to provide such substantiating material as may be required for an informal discussion of the subject matter.

ii. Level I appeals will endeavor to reach equitable resolutions of matters peculiar to individual [LTCF's] **NFs.** They will not be expected to resolve items which have policy implications or broad applicability.

iii. The analyst's recommended resolutions will first be received at appropriate levels within the Department of Health, Health [Economics Services] **Facilities Rate Setting**, and will then be forwarded to the [Director] Division of Medical Assistance and Health Services for [his] **the** approval **of the Director or a designee of the Director.**

iv.-v. (No change.)

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2. Level II Appeal (Administrative Law Appeal): If the [LTCF] **NF** is not satisfied with the results of the Level I Appeal, It may request a hearing before an Administrative Law Judge.

i. Request for an administrative hearing must be submitted in writing to the New Jersey State Department of Health, Health [Economics Services] **Facilities Rate Setting**, Health and Agriculture Building, Room 600, John Fitch Plaza, CN 360, Trenton, New Jersey 08625.

ii. (No change.)

iii. [the] **The** Administrative hearing will be scheduled by the Office of Administrative Law and the facility will be notified accordingly.

iv. At the Administrative hearing the burden is upon the [LTCF] **NF** to demonstrate entitlement to cost adjustments under CARE Guidelines (Cost Accounting and Rate Evaluation System). A complete set of [Care] **CARE** Guidelines may be obtained from: New Jersey State Department of Health, Health [Economic Services] **Facilities Rate Setting**, Health and Agriculture Building, Room 600, John Fitch Plaza, CN 360, Trenton, New Jersey 08625.

[N.J.A.C. 10:63-3.21 (Reserved)]

10:63-3.24 Transitional relief for salary region adjustment; State Fiscal Year 1995

(a) In order to provide transitional relief for those nursing facilities most negatively impacted by the adjustment to a single statewide salary region which began July 1, 1992, a rate adjustment will be made for qualifying facilities. Nursing facilities which are expected to incur reductions in Medicaid reimbursement in excess of $27,500 for services to be provided to Medicaid recipients for the period July 1, 1994 to December 31, 1994, as a result of the implementation of the single statewide salary region, will receive a prospective per diem rate adjustment.

(b) Facilities will be reimbursed the six-month reduction of Medicaid reimbursement in excess of $27,500 for the period effective July 1, 1994 to December 31, 1994. The per diem add-on will be calculated for each facility as follows:

1. Determine for each facility the prospective or interim to actual per diem rate(s) for the period from July 1, 1994 to December 31, 1994 using the salary region system effective prior to July 1, 1992;

i. These calculations will not include the (six month) acuity adjustment of rates for patient mix.

2. Determine the difference between the corresponding single salary region per diem reimbursement rate(s) for the period from July 1, 1994 to December 31, 1994 (excluding the acuity adjustment of rates) and the per diem rate as calculated in (1) above;

3. Multiply the per diem rate difference(s) from (b)2 above by the number of the facility's Medicaid patient days paid (allocated to the applicable rate periods if appropriate) for the period from July 1, 1993 to December 31, 1993;

4. From the product determined in (b)3 above deduct the amount of $27,500;

5. Divide the remainder from (b)4 above by the total number of the facility's Medicaid patient days paid for the period from July 1, 1993 to December 31, 1993;

6. Multiply the quotient by six;

7. Divide the product by five.

(c) The resulting per diem amount will be as an add-on to each eligible facility's routine prospect rate for a five month period commencing August 1, 1994.

Recodify existing N.J.A.C. 10:63-5 as 10:63-4 (No change in text).

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APPENDIX A

State of New Jersey
Department of Human Services
Division of Medical Assistance and Health Services

PROVIDER APPLICATION

1. _____
Legal Name of Provider

2. _____
Type of Business or Facility

_____
Business Name, if Different From Above

3. _____
Address (Service Location Only) Street City County State Zip Code

4. _____
Employer ID Number

5. _____
Telephone Number

6. _____
Lenth of time at above address

7. _____
Billing Address, if different

_____

8. _____
Name of Administrator, Chief Executive Officer, or other responsible official.

9. Indicate legal status of your organization: Profit _____, Non-Profit _____, Private _____, Public _____, Municipal _____, State _____, Charity _____, School Nurse _____, County _____, Other _____. If other, please specify: _____

10. List the specific service(s) for which you are requesting approval for reimbursement under the Medicaid Program.

_____

11. Do you operate from more than one location? _____ Yes _____ No. If yes, list all other subsidiary or affiliated organizations below: (Name and service address)

1. _____ _____
2. _____ _____
3. _____ _____
Please attach additional sheet if necessary.

12. Please indicate if you are a member of a chain organization. _____ Yes _____ No. If yes, indicate name: _____

13. Please indicate your preference to receive central or local reimbursement:

_____ to each satellite location;
_____ to central location at _____

Billing through a central location is allowable and left to the provider's discretion. However, if the provider chooses to bill centrally, pre-addressed claims MUST be utilized since they reflect the proper address and provider number for that location.

14. Do you require a Certificate of Need under the Health Facilities Planning Act from the New Jersey Department of Health? _____ Yes _____ No. If yes, attach a copy of the Certificate of Need. If no, explain why you do not require a certificate.

15. If your business or facility requires a license/permit, indicate type _____ and number _____ Please attach a copy of the license/permit, i.e., Independent Laboratory Certification.

16. CERTIFICATION, ACCREDITATION OR APPROVAL Specify type and attach copy. For example JCAHO (hospitals); New Jersey Department of Health (clinics); Division of Mental Health and Hospitals (mental health clinics); State Board of Dentistry (dental clinics); State Board of Pharmacy (providers offering pharmaceutical services); American Board for Certification in Prosthetics and Orthotics (Prosthetist and/or Orthotist). See Item 16.

17. Approved by Medicare? _____ Yes _____ No. If yes, please indicate Medicare provider number _____ and attach copy of your Medicare approval.

18. Are you currently or have you ever been an approved provider of services under the New Jersey Medicaid Program or the Medicaid Program of any other state or jurisdiction? _____ Yes _____ No. If Yes, list types of services provided and current status. If you were approved at one time and you no longer participate, explain the reason(s).

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19. Have any of the entities named in response to questions 1. or 11. or their officers or partners, or any of the individuals named in response to questions 8. ever been the subject of any license suspension, revocation, or other adverse licensure action in this state or any other jurisdiction? _____ Yes _____ No. If yes, please explain.

20. Have any of the entities named in response to question 1. or 11. or their officers or partners, or any of the individuals named in response to questions 8. ever been indicted, charged, convicted of, or pled guilty or no contest to any federal or state crime in this state or any other jurisdiction? _____ Yes _____ No. If yes, please explain.

21. Have any of the entities named in response to questions 1. or 11. or their officers or partners, or any of the individuals named in response to questions 8. ever been the subject of any Medicaid (Title XIX) or Medicare (Title XVIII) suspension, debarment, disqualification or recovery action in this state or any other jurisdiction? _____ Yes _____ No. If yes, please explain. _____

22. Do any of the entities named in response to question 1. or 11. or their officers or partners, or any of the other individuals named in response to questions 8. own or have any financial interest in any other provider participating in the New Jersey Medicaid (Title XIX) Program or the Medicaid (Title XIX) Progam of any other state or jurisdiction? _____ Yes _____ No. If yes, please list provider name and nature of relationship.

23. Do you charge for goods and/or services? TO ALL _____, TO NONE _____, TO CERTAIN GROUPS ONLY _____. If you charge to all or only certain groups, please explain your arrangement and attach a copy of your fee schedule.

24. List days and hours of operation.

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25. List the names, SSA Number, License/Permit Number and Degree(s) for all professional staff in the organization. Include physicians, dentists, psychologists, pharmacists, registered nurses, licensed practical nurses, registered physical therapists, optometrists, etc. If more space is needed, attach additional sheets. (NOTE: Not required for health care providers certified for Medicaid and or Medicare participation by the State Department of Health and/or HCFA.)

NAME	SSA NUMBER	DOB	LICENSE/PERMIT NUMBER	DEGREE, e.g., MD, DO, DDS, RPT, PhD, CPO, OD, RN, LPN, etc.
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

26. For the purpose of establishing eligibility to receive direct payment for services to recipients under the New Jersey Medicaid (Title XIX) Program, I certify that the information furnished on this application is true, accurate, and complete. I am aware that if any of the statements made by me in this application are willfully false, I am subject to punishment, including but not limited to suspension, debarment or disqualification from the New Jersey Medicaid Program in accordance with N.J.A.C. 10:49-1.17(d)22. I agree to notify the Division of Medical Assistance and Health Services' Provider Enrollment Unit, at least quarterly, of all future additions to any of those named in questions 19. - 22. for whom the response to those same questions would be affirmative.

Signature of Provider Representative _____ Title _____ Date _____

FOR DIVISION AND/OR FISCAL AGENT USE ONLY

[ ] Approve [ ] Disapprove [ ] Other _____ Initial _____ Date

[ ] Approve [ ] Disapprove [ ] Other _____ Initial _____ Date

Provider Type(s)	Category of Service	Specialty

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APPENDIX B

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

NURSING FACILITY PARTICIPATION AGREEMENT
NEW JERSEY MEDICAID PROGRAM

Name of Facility ____

Address ____

State License No. ______________ Medicaid Provider No. ______________________

FOR DIVISION USE ONLY

****

Agreement Begin Date: ________________ **Agreement End Date:** ____________________

****

This Contract, made and entered into by and between the Department of Human Services through the Division of Medical Assistance and Health Services, hereinafter designated as the Department, and the above-named facility, a provider of services, whose address is as stated above, hereinafter designated as the Facility, Witnesseth:

WHEREAS, various persons eligible for benefits under the New Jersey Medicaid program are in need of medical care in the form of skilled nursing care, or intermediate nursing care, as more specifically set forth in Program regulations and guidelines; and

WHEREAS, Section 1902(a)(27) of Title XIX of the Social Security Act requires states to enter into a written agreement with every person or institution providing services under the State Plan for Medical Assistance (Title XIX); and

WHEREAS, pursuant to N.J.S.A. 30:4D-1 et seq., the Department is responsbile for the administration of the Medicaid program and is authorized thereunder to take all necessary steps for the proper and efficient administration of the New Jersey Medicaid program; and

WHEREAS, to participate in the New Jersey Medicaid program, a Nursing Facility must: (1) be licensed under the laws of New Jersey; (2) be currently meeting on a continuing basis standards for licensure; (3) be administered by a licensed nursing facility administrator who holds a current license and who is not suspended, debarred or disqualified from participation in the New Jersey Medicaid program; (4) meet on a continuing basis Federal requirements for participation in Title XIX; and (5) accept the terms and conditions of participation set out herein.

NOW, THEREFORE, in consideration of the mutual promises herein contained, it is agreed by and between the parties hereto as follows:

A. FACILITY AGREES:

1. That it will render all services which have been recognized as an element of cost as set forth in the cost survey report submitted;
2. That it will accept the payment approved under the Mediciad program for a Medicaid recipient in semi-private accommodations, as payment in full and will not make any additional charges

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to the patient or others on his behalf for Medicaid covered services. Payment shall be based on the net amount of the per diem rate times the number of patient days minus the patient's available income, the collection of which is the responsibility of the facility;

3. That it will promptly initiate and terminate billing procedures, pursuant to applicable regulations, when individuals covered under this Program enter or leave the Facility or are assessed at a different level of care;

4. That it will limit billing procedures under this Program to those authorized Mediciad recipients who reside only in those areas of this Facility which are certified for participation in the New Jersey Medicaid program;

5. That it will reserve beds for Medicaid recipients on therapeutic home leave in accordance with State and Federal regulations;

6. That it will maintain all financial records for a period of at least one year after it is notified that such records will not be audited, or for a period of at least one year after they are audited, or for a period of one year after the conclusion of all hearings, appeals and/or other litigation with respect to such audits, whichever is later, and to make available to the appropriate State and/or Federal personnel or their agents, at all reasonable times and places in New Jersey, all necessary records, including but not limited to the following:

   a. Medical records as required by Section 1902(e)(28) of Title XIX of the Social Security Act, and any amendments thereto;

   b. Records of all treatments, drugs, and services for which vendor payments are to be made under the Title XIX program, including the authority for and the date of administration of such treatments, drugs, or services;

   c. Documentation in each patient's record which will enable the Department to verify that each charge is due and proper prior to payment;

   d. Financial records of the Facility, including data necessary to determine appropriate reimbursement rates; and

   e. All other records as may be found necessary by the Department in compliance with any Federal or State law, rule, or regulation promulgated by the United States Department of Health and Human Services or by the Department.

7. That it will comply with the provisions of N.J.S.A. 10:5-12.2 prohibiting any skilled nursing or intermediate care facility whose Medicaid occupancy level is less than the statewide occupancy level as established by the Commissioner of the Department of Human Services from denying admittance to a qualified Medicaid applicant when a nursing home bed becomes available;

8. That it will place a Medicaid recipient only in a unit of the Facility approved by the Division of Medical Assistance and Health Services and covered by this agreement;

9. That it will cooperate fully in permitting and assisting representatives of the Department to make assessments and evaluations of services provided to patients generally, and of the needs and circumstances of individual patients who are recipients of the Medicaid program;

10. That it will secure and arrange for other health services as may be available for Medicaid recipients pursuant to Program regulations;

11. That it will comply with State and Federal Medicaid laws, and rules and regulations promulgated pursuant thereto;

12. That it will comply with the disclosure requirements specified in 42 CFR 455.100 through 42 CFR 455.106;

13. That it will comply with the provisions of the Patient Self Determination Act set forth in Section 4751 of the Federal Omnibus Budget Reconciliation Act of 1990 (OBRA 1990).

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14. That it will cooperate fully in permitting and assisting representatives of the Department in determining continuing conformity with the Federal and State standards applicable to Nursing Facilities;

15. That it will notify the Division of Medical Assistance and Health Services, within five working days, of any change in the status of its license to operate as issued by the New Jersey State Department of Health;

16. That it will not initiate, request or otherwise cause the removal of a Medicaid recipient for the purpose of making an additional bed available for private paying or other non-Medicaid patients, other than in accordance with the Department's regulations on the involuntary transfer of Medicaid recipients;

17. That it will give priority to the readmission of a Medicaid recipient who has been transferred from the Facility to a hospital for medical reasons;

18. That it will provide the Medicaid program with written notice at least 90 days in advance of any change in ownership and/or operation of the Facility;

19. To comply with the requirements of Title VI of the Civil Rights Acts of 1964 and Section 504 of the Rehabilitation Act of 1973 and any amendments thereto; and Section 1909 of P.L. 92-603, Section 242(c) which makes it a crime and sets the punishment for persons who have been found guilty of making a false statement or representation of a material fact in order to receive any benefit or payment under the New Jersey Medicaid program. (The Department of Human Services is required by Federal regulation to make this law known and to warn against false statements in an application/agreement or in a fact used in determining the right to a benefit, or converting a benefit to the use of any person other than one for whom it was intended);

20. To notify the Department within 30 days of filing State or Federal Bankruptcy Proceedings, Receivership Proceedings, or Assignment for the Benefit of Creditors Proceedings;

21. That it will not employ or engage any person who has been suspended, debarred or disqualified from participating in the Medicaid and/or Medicare program by either the Federal Government or any State in the country;

22. That breach or violation of any one of the above provisions shall make this entire agreement subject to immediate cancellation at the Department's discretion, in keeping with the procedures adopted by the Division in accordance with the New Jersey Administrative Procedures Act.

B. DEPARTMENT AGREES:

1. That it will pay for authorized services provided by the Facility in keeping with the availability of State appropriation, on the basis of the net amount of the per diem rate times the number of patient days minus the patient's available income, the collection of which is the responsibility of the Facility, for care required by the Medicaid recipient, including bed and board in semi-private accommodations, as determined by the Department acting under applicable regulations, but in no event will payment be made for any Medicaid recipient determined not to require nursing care;

2. That it will reimburse the Facility through the use of rates that are reasonable and adequate to meet the cost that efficiently and economically operated facilities must incur to provide care in conformity with applicable State and Federal laws, regulations and quality and safety standards;

3. That it will pay the Facility for reserving beds for Medicaid recipients on therapeutic home leave in accordance with State and Federal regulations;

4. That it will make such payments in accordance with applicable laws and regulations as promptly as is feasible after a proper claim is submitted and approved. However, in the event the Department determines that irregularities, deficiencies, or other similar conditions exist, from any cause, it may withhold payments until such irregularities are adjusted;

5. That it will make proper adjustment in the billing errors, as is indicated, to compensate for either overpayment or underpayment subject to existing time limitations;

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6. That it will give the Facility, (subject to paragraph 22), 30 days notice of any impending changes in its status as a participating Nursing Facility;
7. That it will notify the Facility of any change in Title XIX rules and regulations and to work with the individual Facility with the view toward providing the best care available within the limitations of the law and available money;
8. That the Facility may terminate its participation in the Medicaid program at the expiration of this agreement upon a minimum of 90 days written notice to the Department.

C. DEPARTMENT AND FACILITY MUTUALLY AGREE:

1. That, in the event the Federal and/or State laws should be amended or judicially interpreted so as to render the fulfillment of this agreement on the part of either party infeasible or impossible, or if the parties to this agreement should be unable to agree upon modifying amendments which would be needed to enable substantial continuation of the Title XIX Program as the result of amendments or judicial interpretations, then, in that event, both the Facility and the Department shall be discharged from further obligation created under the terms of this agreement, except for equitable settlement of the respective accrued interests up to the date of the termination;
2. That this agreement shall be transferable and assignable upon a change in ownership and/or operation;
3. That, in the event a participating Facility is sold, the Department shall make no division of the reimbursable proceeds for services rendered to Medicaid recipients between the new and former owner, but rather will reimburse the owner of record as of the billing month for all services rendered. The new and former owner shall make the necessary adjustments; and
4. That this agreement may be terminated for any of the following reasons: (1) upon decertification of the Facility by the New Jersey State Department of Health or the Health Care Financing Administration (HCFA), (2) by mutual consent of the parties, (3) for cause under applicable clauses herein, (4) without cause, by the Department, upon 90 days written notice to the Facility, or (5) because of Federal and/or State government withdrawal from Program participation.

_____

Signature of Authorized Representative of Facility

_____

Title

_____

Division of Medical Assistance and Health Services
Department of Human Services

MCNH-38 (rev. 5/92)

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DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

APPENDIX C

FORM APPROVED
OMB No 0938-0086

INSTRUCTIONS FOR COMPLETING DISCLOSURE OF OWNERSHIP AND CONTROL INTEREST STATEMENT (HCFA-1513)

Completion and submission of this form is a condition of participation, certification, or recertification under any of the programs established by Titles V, XVIII, XIX, and XX, or as a condition of approval or renewal of a contractor agreement between the disclosing entity and the secretary of appropriate state agency under any of the above-titled programs, a full and accurate disclosure of ownership and financial interest is required. Failure to submit requested information may result in a refusal by the Secretary or appropriate State agency to enter into an agreement or contract with any such institution or in termination of existing agreements.

SPECIAL INSTRUCTIONS FOR TITLE XX PROVIDERS

All title XX providers must complete Part II(a) and (b) of this form. Only those Title XX providers rendering medical, remedial, or health related homemaker services must complete Parts II and III. Title V providers must complete Parts II and III

General Instructions

For definitions, procedures and requirements, refer to the appropriate Regulations:

Title V - 42CFR 51a.144
Title XVIII - 42CFR 420.200-206
Title XIX - 42CFR 455.100-106
Title XX - 45CFR 228.72-73

Please answer all questions as of the current date. If the yes block for any item is checked, list requested additional information under the Remarks Section on page 2, referencing the item number to be continued. If additional space is needed use an attached sheet.

Return the original and second and third copies to the State agency; retain the first copy for your files.

This form is to be completed annually. Any substantial delay in completing the form should be reported to the State survey agency.

DETAILED INSTRUCTIONS

These instructions are designed to clarify certain questions on the from. Instructions are listed in question order for easy reference. No instructions have been given for questions considered self-explanatory.

IT IS ESSENTIAL THAT ALL APPLICABLE QUESTIONS BE ANSWERED ACCURATELY AND THAT ALL INFORMATION BE CURRENT.

Item I (a) Under identifying information specify in what capacity the entity is doing business as (DBA), example, name of trade or corporation.
(b) **For Regional Office Use Only.** If the yes box is checked for Item VII the Regional Office will enter the 5-digit number assigned by HCFA to chain organizations.

Item II - Self-explanatory.

Item III - List the names of all individuals and organizations having direct or indirect ownership interests, or controlling interest separately or in combination amounting to an ownership interest of 5 percent or more in the disclosing entity.

Direct ownership interest is defined as the possession of stock, equity in capital or any interest in the profits of the disclosing entity. A disclosing entity is defined as a Medicare provider or supplier, or other entity that furnishes services or arranges for furnishing services under Medicaid or the Maternal and Child Health program, or health related services under the social services program.

Indirect ownership interest is defined as ownership interest in an entity that has direct or indirect ownership interest in the disclosing entity. The amount of indirect ownership in the disclosing entity that is held by any other entity is determined by multiplying the percentage of ownerwhip interest at each level. An indirect ownership interest must be reported if it equates to an ownership interest of 5 percent or more in the disclosing entity. Example: if A owns 10 percent of the stock in a corporation that owns 80 percent of the stock of the disclosing entity, A's interest equates to an 8 percent indirect ownership and must be reported.

Controlling interest is defined as the operational direction or management of a disclosing entity which may be maintained by any or all of the following devices: the ability or authority, expressed or reserved, to amend or change the corporate identity (i.e., joint venture agreement, unincorporated business status) of the disclosing entity; the ability or authority to nominate or name members of the Board of Directors or Trustees of the disclosing entity; the ability or authority, expressed or reserved, to amend or **change the by-laws, constitution, or other operating or management direction of the disclosing entity; the right to control any or all of the assets or other property of the disclosing entity upon the sale or dissolution of that entity; the ability or authority, expressed or** reserved, to control the sale of any or all of the assets, to encumber such assets by way of mortage or other indebtedness, to dissolve the entity, or to arrange for the sale or transfer of the disclosing entity to new ownership or control.

Items IV-VII - Changes in Provider Status

Change in provider status is defined as any change in management control. Examples of such changes would include: a change in Medical or Nursing Director, a new Administrator, contracting the operation of the facility to a management corporation, a change in the composition of the owning partnership which under applicable State law is not considered a change in ownership, or the hiring or dismissing of any employees with 5 percent or more financial interest in the facility or in an owning corporation, or any change of ownership.

For Items IV-VII, if the yes box is checked, list additional information requested under Remarks. Clearly identify which item is being continued.

Item IV - (a & b) If there has been a change in ownership within the last year or if you anticipate a change, indicate the date in the appropriate space.

Item V - If the answer is yes, list name of the management firm and employer identification number (EIN), or the name of the leasing organization. A management company is defined as any organization that operates and manages a business on behalf of the owner of that business, with the owner retaining ultimate legal responsibility for operation of the facility.

Item VI - If the answer is yes, identify which has changed (Administrator, Medical Director, or Director of Nursing) and the date the change was made. Be sure to include name of the new Administrator, Director of Nursing or Medical Director, as appropriate.

Item VII - A chain affiliate is any free-standing health care facility that is either owned, controlled, or operated under lease or contract by an organization consisting of two or more free-standing health care facilities organized within or across State lines which is under the ownership or through any other device, control and direction of a common party. Chain affiliates include such facilities whether public, private, charitable or proprietary. They also include subsidiary organizations and holding corporations. Provider-based facilities, such as hospital-based home health agencies, are not considered to be chain affiliates.

Item VIII - If yes, list the actual number of beds in the facility now, and the previous number.

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Department of Health and Human Services
Health Care Financing Administration

Form Approved
OMB No. 0938-0086

DISCLOSURE OF OWNERSHIP AND CONTROL INTEREST STATEMENT

I. Identifying Information

(a). Name of Entity	D/B/A	Provider No.	Vendor No.	Telephone No.

Street Address	City, County, State	Zip Code

(b) *(To be completed by HCFA Regional Office)* Chain Affiliate No. ☐☐☐☐☐ LB1

II. Answer the following questions by checking "Yes" or "No". If any of the questions are answered "Yes", list names and addresses of individuals or corporations under Remarks on page 2. Identify each item number to be continued.

A. Are there any individuals or organizations having a direct or indirect ownership or control interest of 5 percent or more in the institution, organizations, or agency that have been convicted of a criminal offense related to the involvement of such persons, or organizations in any of the programs established by Titles XVIII, XIX, or XX?

☐ Yes ☐ No LB2

B. Are there any directors, officers, agents, or managing employees of the institution, agency or organization who have ever been convicted of a criminal offense related to their involvement in such programs established by Titles XVIII, XIX, or XX?

☐ Yes ☐ No LB3

C. Are there any individuals currently employed by the institution, agency, or organization in a managerial, accounting, auditing, or similar capacity who were employed by the institution's, organization's, or agency's fiscal intermediary or carrier within the previous 12 months? (Title XVIII providers only)

☐ Yes ☐ No LB4

III. (a) List names, addresses for individuals, or the EIN for organizations having direct or indirect ownership or a controlling interest in the entity. (See instructions for definition of ownership and controlling interest.) List any additional names and addresses under "Remarks" on Page 2. If more than one individual is reported and any of these persons are related to each other, this must be reported under Remarks.

Name	Address	EIN
		LB5

(b) Type of Entity: ☐ Sole Proprietorship ☐ Partnership ☐ Corporation LB6
☐ Unincorporated Associations ☐ Other (Specify)

(c) If the disclosing entity is a corporation, list names, addresses of the Directors, and EINs for corporations under Remarks.

Check appropriate box for each of the following questions

(d) Are any owners of the disclosing entity also owners of other Medicare/Medicaid facilities? (Example, sole proprietor, partnership or members of Board of Directors.) If yes, list names, addresses of individuals and provider numbers.

☐ Yes ☐ No LB7

Name	Address	Provider Number

Form HCFA-1513 (5-86) Page 1

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Department of Health and Human Services
Health Care Financing Administration

Form Approved
OMB No. 0938-0086

IV. (a) Has there been a change in ownership or control within the last year?
If yes, give date _____ ☐ Yes ☐ No LB8

(b) Do you anticipate any change of ownership or control within the year?
If yes, when? _____ ☐ Yes ☐ No LB9

(c) Do you anticipate filing for bankruptcy within the year?
If yes, when? _____ ☐ Yes ☐ No LB10

V. Is this facility operated by a management company, or leased in whole or part by another organization?
If yes, give date of change in operations _____ ☐ Yes ☐ No LB11

VI. Has there been a change in Administrator, Director of Nursing or Medical Director within the last year? ☐ Yes ☐ No LB12

VII. (a) Is this facility chain affiliated? (If yes, list name, address of Corporation, and EIN) ☐ Yes ☐ No LB13
Name EIN #

Address

LB14

VII. (b) If the answer to Question VII.a. is No, was the facility ever affiliated with a chain? ☐ Yes ☐ No LB18
(If YES, list Name, Address of Corporation and EIN)
Name EIN #

Address

LB19

VIII. Have you increased your bed capacity by 10% or more or by 10 beds, whichever is greater, within the last 2 years? ☐ Yes ☐ No LB15

If yes, give year of change _____
Current beds _____ LB16 Prior beds _____ LB17

WHOEVER KNOWINGLY AND WILLFULLY MAKES OR CAUSES TO BE MADE A FALSE STATEMENT OR REPRESENTATION OF THIS STATEMENT, MAY BE PROSECUTED UNDER APPLICABLE FEDERAL OR STATE LAWS. IN ADDITION, KNOWINGLY AND WILLFULLY FAILING TO FULLY AND ACCURATELY DISCLOSE THE INFORMATION REQUESTED MAY RESULT IN DENIAL OF A REQUEST TO PARTICIPATE OR WHERE THE ENTITY ALREADY PARTICIPATES, A TERMINATION OF ITS AGREEMENT OR CONTRACT WITH THE STATE AGENCY OR THE SECRETARY, AS APPROPRIATE.

Name of Authorized Representative (Typed)	Title
Signature	Date

Remarks

Form HCFA-1513 (5-86) Page 2

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APPENDIX D

STATE OF NEW JERSEY

DEPARTMENT OF HEALTH *DEPARTMENT OF HUMAN SERVICES*

COST STUDY FOR NURSING FACILITY

SCHEDULE 1

D.O.H. Provider Number: _____	Provider Name:	Provider Telephone:
Unisys Number: _____		
Our latest natural 12 month reporting period was: _____	to: _____	Number of Months: _____

GENERAL ADMINISTRATIVE INFORMATION

(Check all applicable blocks)

A. TYPE OF FACILITY

1. ☐ Hospital: _____
2. ☐ Nursing Facility
3. ☐ Residential Unit
4. ☐ Medical Day Care
5. ☐ *Special Care:* _____
   UNISYS Number: _____
6. ☐ *Special Care:* _____
   UNISYS Number: _____
7. ☐ *Special Care:* _____
   UNISYS Number: _____
8. ☐ *Other - Specify:* _____
   UNISYS Number: _____

B. TYPE OF OWNERSHIP

1. ☐ Proprietary
2. ☐ Voluntary
3. ☐ Governmental
4. ☐ Other - Specify: _____

	Building	Land
Owned by Operator	5. ☐	8. ☐
Leased from Related Organization	6. ☐	9. ☐
Leased from Unrelated Organization	7. ☐	10. ☐

Name of Licensee Corporation Owning Facility: _____

Name of Organization Operating Facility: _____

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EXPENSES

SCHEDULE A

Page 1 of 2 Pages.

Provider Name: _____ Period Ending: _____

DO NOT CHANGE PRE-PRINTED WORDING ON THIS SCHEDULE.

Provider Number: _____ Unisys Number: _____

		Cost Center	(A) Hours	(B) Salaries & Fringe Benefits	(C) Fees And Other Expenses	(D) Recovery and Eliminations	(E) Net (1) Routine Expenses	(F) Expenses Applicable To NF	(G) Expenses Applicable Non-NF (5)	(H) Allocation Basis (Per Sch. A-5)
1	GFRB	General Fringe Benefits, A-7	//////////	0	//////////	0	0	0	0	AA
		GENERAL SERVICES								
2	MGMT	Management, Per Sch. A-1	0	0	0	0	0	0	0	AA
3	ADM	Administrator, Per Sch. A-1	0	0	0	0	0	0	0	AA
4	ASAD	Assistant Administrator, A-1	0	0	0	0	0	0	0	AA
5	OADM	Other Administrative, A-2	0	0	0	0	0	0	0	AA
6	DIET	Dietary (2)	0	0	0	0	0	0	0	AA
7	FOOD	Food	//////////	//////////	0	0	0	0	0	AA
8	LDLI	Laundry and Linen	0	0	0	0	0	0	0	AA
9	HSKP	Housekeeping	0	0	0	0	0	0	0	AA
10	OGSR	Other General Services, A-7	0	0	0	0	0	0	0	AA
11		Total General Services	0	0	0	0	0	0	0	
		PROPERTY OPERATING (3)								
12	MAIN	Maintenance (exclude auto)	0	0	0	0	0	0	0	AA
13	PTXL	Property Taxes (Land)	//////////	//////////	0	0	0	0	0	AA
14	PTXB	Property Taxes (Building)	//////////	//////////	0	0	0	0	0	AA
15	UTIL	Utilities, Per Sch. A-7	//////////	//////////	0	0	0	0	0	AA
16	PRIN	Property Insurance	//////////	//////////	0	0	0	0	0	AA
17		Total Property, Operating	0	0	0	0	0	0	0	
		PROPERTY CAPITAL (3)								
18	DPAM	Depreciation and Amortization	//////////	//////////	0	0	0	0	0	AA
19	RTLE	Net Rentals and Leases	//////////	//////////	0	0	0	0	0	AA
20	INTR	Allowable Interest	//////////	//////////	0	0	0	0	0	AA
21		Total Property Capital	//////////	//////////	0	0	0	0	0	

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EXPENSES

SCHEDULE A

Provider Name: _____ Period Ending: _____

Provider Number: _____ Unisys Number _____

DO NOT CHANGE PRE-PRINTED WORDING ON THIS SCHEDULE.

		Cost Center	(A) Hours	(B) Salaries & Fringe Benefits	(C) Fees And Other Expenses	(D) Recovery and Eliminations	(E) Net (1) Routine Expenses	(F) Expenses Applicable To NF	(G) Expenses Applicable To Non-NF (5)	(H) Allocation Basis (Per Sch. A-5)
		PATIENT CARE								
22		Reserved	//////////	//////////	//////////	//////////	//////////	//////////	//////////	
23	RNS	Nursing, RN's - Salaried	0	0	//////////	0	0	0	0	AA
24	RNCT	Nursing, RN's - Contracted	0	0	//////////	0	0	0	0	AA
25	LPNS	Nursing, LPN's - Salaried	0	0	//////////	0	0	0	0	AA
26	LPCT	Nursing, LPN's - Contracted	0	0	//////////	0	0	0	0	AA
27	OSAL	Nursing, Other - Salaried	0	0	//////////	0	0	0	0	AA
28	OSCT	Nursing, Other - Contracted	0	0	//////////	0	0	0	0	AA
29	MDDR	Medical Director	0	0	0	0	0	0	0	AA
30	PTAC	Patient Activities	0	0	0	0	0	0	0	AA
31	PHCS	Pharmaceutical Consultant	0	0	0	0	0	0	0	AA
32	NLDG	Non-Legend Drugs	//////////	//////////	0	0	0	0	0	AA
33	MDSP	Medical Supplies	//////////	//////////	0	0	0	0	0	AA
34	SOSR	Social Services	0	0	0	0	0	0	0	AA
35	OXYG	Oxygen	//////////	//////////	0	0	0	0	0	AA
36		Total Patient Care	0	0	0	0	0	0	0	
37	NRNA	Non-Routine/Non-Allowable Expenses (per Schedule A-3)	0	0	0	0	0	0	0	
38	TOT	Total Expenses	0	0	0	0	0	0	0	

(1) See Instructions for definition and instructions.

(2) ☐ Check this block if Dietary is 100% contracted.

(3) Amounts paid by lessor for property operating, should be netted from line 19 and reported on line(s) 12, 13, 14, 15, and 16, as applicable. For related lease, report depreciation and interest on lines 18 and 20.

(4) Report nursing contracted service under Column A for hours and Column B for cost. For all other contracted services report the cost only, under Column C.

(5) Defined as "Expenses Applicable to Residential, Sheltered, Medical Day Care, Other or Special Care Programs".

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MANAGEMENT AND ADMINISTRATION SCHEDULE A-1

Provider Name: _____ Period Ending: _____

Provider Number: _____ Unisys Number: _____

DO NOT CHANGE PRE-PRINTED WORDING ON THIS SCHEDULE.

		(A) Hours	(B) Salaries & Fringe Benefits	(C) Fees And Other Expenses	(D) Recovery and Eliminations	(E) Net Routine Expenses
A	**Details of Management**					
1	Management Fees and Related Expenses	0	0	0	0	0
2	Home Office Costs, Not in Line 1 above.	0	0	0	0	0
3	Director's Fees and Expenses (Limit $1,000)	//////////	0	0	0	0
4	Related Party Compensation	0	0	0	0	0
5	Auto Leasing and Depreciation	//////////	//////////	0	0	0
6	Other Auto Expenses	//////////	//////////	0	0	0
7	Out of State Travel	//////////	//////////	0	0	0
8	General Fringe Benefits *	//////////	//////////	0	0	0
9	Special Fringe Benefits	//////////	0	0	0	0
10	Dues	//////////	//////////	0	0	0
11	Other:	0	0	0	0	0
12	Total to Schedule A, Line 2	0	0	0	0	0
B	**Details of Administrator's Costs**					
13	Salary	0	0	0	0	0
14	General Fringe Benefits *	//////////	//////////	0	0	0
15	Special Fringe Benefits	//////////	0	0	0	0
16	Out of State Travel	//////////	//////////	0	0	0
17	Dues	//////////	//////////	0	0	0
18	Auto Depreciation and Leasing	//////////	//////////	0	0	0
19	Other Auto Expenses	//////////	//////////	0	0	0
20	Other:	0	0	0	0	0
21	Total to Schedule A, Line 3	0	0	0	0	0
C	**Details of Assistant Administrator's Costs**					
22	Salary	0	0	0	0	0
23	General Fringe Benefits *	//////////	//////////	0	0	0
24	Special Fringe Benefits	//////////	0	0	0	0
25	Out of State Travel	//////////	//////////	0	0	0
26	Dues	//////////	//////////	0	0	0
27	Auto Depreciation and Leasing	//////////	//////////	0	0	0
28	Other Auto Expenses	//////////	//////////	0	0	0
29	Other:	0	0	0	0	0
30	Total to Schedule A, Line 4	0	0	0	0	0

☐ ***Check if Management Costs include Home Office Costs. A separate Schedule of Home Office Costs must be attached.***

☐ ***Check if actual Fringe Benefits are reported on Management, Administrator, and/or Assistant Administrator Salary. Salary and Actual Fringe Benefits must be reported in Column C, Fees and Other Expenses.***

NOTE:The cost of related parties who work at the facility less than 20 hours per week should be reported in the Management Cost Center.

*** If General Fringe Benefits are not reported on Schedule A, Line 1.***

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DETAILS OF OTHER ADMINISTRATIVE SCHEDULE A-2

Provider Name: _____ **Period Ending:** _____

Provider Number: _____ **Unisys Number:** _____

DO NOT CHANGE PRE-PRINTED WORDING ON THIS SCHEDULE.

		(A) Hours	(B) Salaries & Fringe Benefits	(C) Fees And Other Expenses	(D) Recovery and Eliminations	(E) Net Routine Expenses
1	Home Office/Management Fees	0	0	0	0	0
2	Office Personnel	0	0	0	0	0
3	Office Supplies and Expenses	//////////	//////////	0	0	0
4	Telephone	0	0	0	0	0
5	License and Dues #	//////////	//////////	0	0	0
6	Data Processing	0	0	0	0	0
7	Insurance not related to property or employees	//////////	//////////	0	0	0
8	Business Taxes	//////////	//////////	0	0	0
9	Travel	//////////	//////////	0	0	0
10	Accounting Fees *	//////////	//////////	0	0	0
11	Legal Fees *	//////////	//////////	0	0	0
12	Other Administrative Fees *	//////////	//////////	0	0	0
13	Seminars	0	0	0	0	0
14	Medical Records	0	0	0	0	0
15	Allowable Contributions	//////////	//////////	0	0	0
16	Help Wanted Ads	//////////	//////////	0	0	0
17	Services and Supplies Sold, Per Schedule A-4	//////////	//////////	//////////	0	0
18	Purchase Discounts and Rebates, Per Schedule A-4	//////////	//////////	//////////	0	0
19	Other OADM Recoveries, Schedule A-4, Lines 14 - 16	//////////	//////////	//////////	0	0
20	Amortization of Start-Up Costs **	//////////	//////////	0	0	0
21	Nursing Administration, Per Schedule A-7, Line 22	0	0	0	0	0
22	Allowable Employee Gifts and Party	0	0	0	0	0
23	Other:	0	0	0	0	0
24	Other:	0	0	0	0	0
25	Other:	0	0	0	0	0
26	Other:	0	0	0	0	0
27	Total To Schedule A, Line 5	0	0	0	0	0

** See Instructions for Schedule A-2.* *** Amount not reported in other cost centers.*

 # Exclude Line 10, Line 17, and Line 26, Schedule A-1.

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NON-ROUTINE/NON-ALLOWABLE EXPENSES

SCHEDULE A-3

Provider Name: _____ Period Ending: _____

Provider Number: _____ Unisys Number: _____

Report all Non-Routine/Non-Allowable Expenses only on this Schedule. Totals are brought forward to Schedule A, Line 37.

DO NOT CHANGE PRE-PRINTED WORDING ON THIS SCHEDULE.

		(A) Hours	(B) Salaries & Fringe Benefits	(C) Fees And Other Expenses	(D) Revenues
1	Personal Expenses	0	0	0	0
2	Interest Assessed by DMAHS	//////////	//////////	0	0
3	Fines, Penalties and Non-Allowable Interest	//////////	//////////	0	0
4	Amoritization of Organization Cost	//////////	//////////	0	0
5	Prescribed Drugs	//////////	//////////	0	0
6	Laboratory and X-Ray	0	0	0	0
7	Payments to Physicians (exclude Medical Director)	0	0	0	0
8	Physical, Speech, Hearing and Occupational Therapy	0	0	0	0
9	Income Taxes, including N.J. Corporate Business Tax	//////////	//////////	//////////	0
	on Net Income and subsequent years liability	//////////	//////////	0	0
10	Gift Shop and Snack Bar	0	0	0	0
11	Barber and Beauty Shop	0	0	0	0
12	Contributions, except for Voluntary Fire and First	//////////	//////////	//////////	0
	Aid Companies in the vicinity of the Nursing Home	//////////	//////////	0	0
13	Collection cost for over due private patient accounts. (1)	//////////	//////////	0	0
14	Promotional and Directory advertising except for	//////////	//////////	//////////	0
	bold print yellow page ads.	//////////	//////////	0	0
15	Expenses relating to future expansion, to include	//////////	//////////	//////////	0
	Architect Fees	//////////	//////////	0	0
16	Fund Raising Expenses	0	0	0	0
17	Utilization Review	0	0	0	0
18	Dental Services	0	0	0	0
19	Employee Gifts and Party (including Christmas Party)	0	0	0	0
20	Home Office/Management Fees	0	0	0	0
21	Bad Debts (2)	//////////	//////////	0	0
22	Other:	0	0	0	0
23	Other:	0	0	0	0
24	Other:	0	0	0	0
25	Other:	0	0	0	0
26	Other:	0	0	0	0
27	Total of Columns A, B, and C to Schedule A, Line 37	0	0	0	0

NOTE: (1) *Collection Agency costs only.*

NOTE: (2) *Bad debts are not expense items, but reductions to income. (Do not include in costs.)*

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DETAILS OF RECOVERIES AND ELIMINATIONS

SCHEDULE A-4

Provider Name: _____ Period Ending: _____

Provider Number: _____ Unisys Number: _____

DO NOT CHANGE PRE-PRINTED WORDING ON THIS SCHEDULE.

		(1) AMOUNT		(2) COST CENTER
A	**INCIDENTAL REVENUES**			
1	Meals sold to Guests or Employees	0		FOOD
2	Rooms rented to Employees	0		RTLE
3	Equipment rentals excluding routine care	0		RTLE
4	Services and Supplies sold	0		OADM
5	Telephone Commissions	0		OADM
6	Purchase Discounts and Rebates	0		OADM
7	Laundry Service to Employees	0		LDLI
8	Private Nursing Services	0	*	RNS
9	Medical Supplies sold to other than patients	0		MDSP
10	Property rentals	0	0	RTLE
11	Interest	0		INTR
12	General Fringe Benefits	0		GFRB
13	General Fringe Benefits	0	0	GFRB
14	Other:	0		OADM
15	Other:	0		OADM
16	Other:	0	0	OADM
17	Other:	0		
18	Other:	0		
19	Other:	0		
20	Other:	0		
21	Other:	0		
22	Other:	0		
23	Total:	0		//////////
B	**RESTRICTED FUNDS EXPENSED FOR OPERATING COSTS**			
24	Other:	0		
25	Other:	0		
26	Other:	0		
27	Other:	0		
28	Other:	0		
29	Total:	0		//////////
30	TOTAL: (Sum of Section A, Line 23 and Section B, Line 29)	0		

** Indicate the center that the majority of cost are credited, for this center and all others.*

(1) Enter the line item amounts on Schedule A, Col. D for the appropriate cost centers.

(2) Enter the cost center syntex (i.e.; ADM, DIET, HSKP) from Schedule A where the line items for eliminations and recoveries appear on Schedule A, Column D. Cost Center abbreviations which may be used on lines 17 through 22 include: DIET, DPAM, HSKP, LDLI, MAIN, MDDR, MDSP, NLDG, OGSR, OSCT, OXYG, PHCS, PRIN, PTAC, PTXB, PTXL, and SOSR.

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BASIS OF ALLOCATION SCHEDULE

SCHEDULE A-5

Provider Name: _____ Period End: _____ No 100% Nursing Facility

Provider Number _____ Unisys Num: _____ No Special Care Program(s)

PLEASE COMPLETE FOR ALLOCATION BASIS USED:

DO NOT CHANGE PRE-PRINTED WORDING ON THIS SCHEDULE.

CODE (Report on Sch A., Col. H)	BASIS	Applicable To NF	Applicable To Non-NF	Total	Percent Applicable To NF
A	Patient Days	0	0	0	0.0000%
B	Accumulated Costs	0	0	0	0.0000%
C	Number of Meals Served	0	0	0	0.0000%
D	Pounds of Laundry	0	0	0	0.0000%
E	Square Feet	0	0	0	0.0000%
F	Other:	0	0	0	0.0000%
G	Other:	0	0	0	0.0000%
H	Other:	0	0	0	0.0000%
I	Other:	0	0	0	0.0000%
J	Other:	0	0	0	0.0000%
K	Other:	0	0	0	0.0000%
L	Other:	0	0	0	0.0000%
M	Other:	0	0	0	0.0000%
N	Other:	0	0	0	0.0000%
O	Other:	0	0	0	0.0000%
P	Other:	0	0	0	0.0000%
Q	Other:	0	0	0	0.0000%
R	Other:	0	0	0	0.0000%
S	Other:	0	0	0	0.0000%
T	Other:	0	0	0	0.0000%
U	Other:	0	0	0	0.0000%
V	Other:	0	0	0	0.0000%
W	Other:	0	0	0	0.0000%
X	Other:	0	0	0	0.0000%
Y	Other:	0	0	0	0.0000%
Z	Other:	0	0	0	0.0000%
AA					0.0000%

Informational Accumulated Costs, Sched. A Total	0	0	0	0.0000%

The following allocation bases are acceptable. Only one allocation base may be used per line. This form MUST be completed for ALL applicable lines. Use of any other basis MUST BE accompanied by a letter of approval from the Medicaid Bureau of Institutional and Provider Reimbursement.

COST CENTER	*Allocation Basis*
1. *General Fringe Benefits, Management, Administrator, Assistant Administrator, Other Administrative*	*Patient Days or Accumulated Costs (Schedule A, Lines 6-36)*
2. *Dietary, Food*	*Patient Days or Number of Meals Served*
3. *Laundry*	*Patient Days of Pounds of Laundry*
4. *Housekeeping, Other General Services, All Property Operating and Fixed Property Cost Centers*	*Square Feet*
5. *Nursing, All Special Patient Care Cost Centers*	*Patient Days or Actual Cost*

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SCHEDULE A-6

Period Ending _____

MEDICAL DAY CARE EXPENSES

This schedule is for facilities that have both Residential and Medical day care expenses. These expenses should be combined and reported on Schedule A, Column F. Report on this schedule only those expenses from Schedule A, Column F that are medical day care expenses.

COST CENTER	SALARY	FEES AND OTHER EXPENSES	TOTAL

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OTHER COST DETAILS

SCHEDULE A-7

Provider Name: _____ Period Ending: _____

Provider Number: _____ Unisys Number: _____

DO NOT CHANGE PRE-PRINTED WORDING ON THIS SCHEDULE.

		Cost Center	(A) Hours	(B) Salaries	(C) Supplies	(D) Contracted Services	(E) Other Expenses	(F) Recovery and Eliminations	(G) Total Applicable Expenses
UTIL		**Utilities**							
	1	Electric	////////////	////////////	////////////	////////////	0	0	0
	2	Fuel Oil	////////////	////////////	////////////	////////////	0	0	0
	3	Natural Gas	////////////	////////////	////////////	////////////	0	0	0
	4	Water & Sewage	////////////	////////////	////////////	////////////	0	0	0
	5	Total: (To Schedule A, Line 15)	////////////	////////////	////////////	////////////	0	0	0
GFRB		**General Fringe Benefits**							
	6	FICA - OASDI	////////////	////////////	////////////	////////////	0	0	0
	7	FICA - Medicare	////////////	////////////	////////////	////////////	0	0	0
	8	Workers' Compensation	////////////	////////////	////////////	////////////	0	0	0
	9	Unemployment Insurance	////////////	////////////	////////////	////////////	0	0	0
	10	Disability Insurance	////////////	////////////	////////////	////////////	0	0	0
	11	Medical Insurance	////////////	////////////	////////////	////////////	0	0	0
	12	Life and Other Insurance	////////////	////////////	////////////	////////////	0	0	0
	13	Other: (Specify)	////////////	////////////	////////////	////////////	0	0	0
	14	Other: (Specify)	////////////	////////////	////////////	////////////	0	0	0
	15	Other: (Specify)	////////////	////////////	////////////	////////////	0	0	0
	16	General Fringe Benefit Recovery, A-4	////////////	////////////	////////////	////////////	////////////	0	0
	17	Total: (To Schedule A, Line 1)	////////////	////////////	////////////	////////////	0	0	0
NADM		**Nursing Administration**							
	18	Inservice Coordinator	0	0	0	0	0	0	0
	19	Quality Assurance	0	0	0	0	0	0	0
	20	Ward Clerk	0	0	0	0	0	0	0
	21	Other: (Specify)	0	0	0	0	0	0	0
	22	Total: (To Schedule A-2, Line 21)	0	0	0	0	0	0	0
OGSR		**Other General Services**							
	23	Disposal Service	0	0	0	0	0	0	0
	24	Exterminating Service	0	0	0	0	0	0	0
	25	Grounds Maintenance	0	0	0	0	0	0	0
	26	Medical Library	0	0	0	0	0	0	0
	27	Motor Pool	0	0	0	0	0	0	0
	28	Plant Security	0	0	0	0	0	0	0
	29	Snow Removal	0	0	0	0	0	0	0
	30	Other: (Specify)	0	0	0	0	0	0	0
	31	Total: (To Schedule A, Line 10)	0	0	0	0	0	0	0

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PATIENT DAYS AND ROUTINE REVENUES — SCHEDULE B

Provider Name: _____ Period Ending: _____

Provider Number: _____ Unisys Number: _____

DO NOT CHANGE ANY PRE-PRINTED WORDING ON THIS SCHEDULE.

ACTUAL BASE PERIOD PATIENT DAYS

From: _____ To: _____

A. PATIENT DAYS	*(A) Nursing Facility NF*	*(B) Residential/ Shelter*	*(C) Special Program #1:*	*(D) Special Program #2:*	*(E) Special Program #3:*	*(F) Other Hospital: ***	*(G) Total*
1. Private	0	0	0	0	0	0	0
2. Medicaid	0	//////////	0	0	0	0	0
3. Medicare	0	0	0	0	0	0	0
4. Therapeutic Leave	0	0	0	0	0	0	0
5. Other:	0	0	0	0	0	0	0
6. Sub Total	0	0	0	0	0	0	0
7. Medicaid Bed Hold Days	0	0	0	0	0	0	0
8. Other Bed Hold Days	0	0	0	0	0	0	0
9. Total	0	0	0	0	0	0	0
10. Medical Day Care Days	0						

ROUTINE REVENUES

B. GROSS REVENUES FROM ROUTINE SERVICES							
11. Private	0	0	0	0	0	0	0
12. Medicaid	0	0	0	0	0	0	0
13. Medicare	0	0	0	0	0	0	0
14. Other:	0	0	0	0	0	0	0
15. Other:	0	0	0	0	0	0	0
16. Other:	0	0	0	0	0	0	0
17. Total	0	0	0	0	0	0	0

C. MAXIMUM BED DAYS		*(A) Number Of Beds*	*(B) Number Of Days In Period*	*(C) Maximum Bed Days*	*(D) TOTAL NF BEDS*
18. Licensed LTC Beds *					
From:	To:		0	0	
From:	To:		0	0	
From:	To:		0	0	
From:	To:		0	0	
From:	To:		0	0	*(D) WEIGHTED NF BEDS*
From:	To:		0	0	
From:	To:		0	0	
From:	To:		0	0	
19. Quiet Beds		0	0	0	
20. Acute Care Hospital Beds	**	0	//////////	//////////	
21. Sheltered/Residential Beds		0	//////////	//////////	
22. Special Program #1 Beds *			//////////	//////////	*PROGRAM #1 BEDS*
From:	To:	0	0	0	
From:	To:	0	0	0	
23. Special Program #2 Beds *			//////////	//////////	*PROGRAM #2 BEDS*
From:	To:	0	0	0	
From:	To:	0	0	0	
24. Special Program #3 Beds *			//////////	//////////	*PROGRAM #3 BEDS*
From:	To:	0	0	0	
From:	To:	0	0	0	
25. Total			0	0	

** If there has been a change in Licensed Beds during this reporting period, report data on the appropriate lines and refer to Schedule B Instructions for the calculation. ATTACH D.O.H. Licensing approval letter(s).*

*** Use this section ONLY if hospital costs are reported on Schedule A.*

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SELECTED DATA

SCHEDULE D

Provider Name: _____ Period Ending: _____

Provider Number: _____ Unisys Num: _____

A. NURSING HOURS REQUIREMENT:		TOTAL HOURS PAID REPORTED ON SCH. A COL. A	TOTAL HOURS WORKED	PERCENT WORKED
1	Nursing, RN's - Salaried, Schedule A, Line 23	0	0	
2	Nursing, LPN's - Salaried, Schedule A, Line 25	0	0	
3	Nursing, Other - Salaried, Schedule A, Line 27	0	0	
4	Total Nursing - Salaried Hours	0	0	

B. EMPLOYEE MEALS:

5	Estimated Meals served to Employees per year	0	Enter (0) if employees are
6	Estimated Average Price Charged Employees	$0.00	not charged

C. CURRENT PROPERTY DATA		Expenditures		
		CAPITALIZED Maintenance & Replacement	Additions	Net Rental & Leases
		D	E	F
	Expenditures for Acquisition (Net of Trade-Ins) or Use of Property			
7	Land	0	0	0
8	Land Improvements	0	0	0
9	Buildings including Additions	0	0	0
10	Building Equipment	0	0	0
11	Reimbursable Moveable Equipment	0	0	0
12	Non-Reimbursable Moveable Equipment	0	0	0
13	Motor Vehicles (Other than for Administrator)	0	0	0
14	Leasehold Improvements & Other Amortization Items	0	0	0
15	***Special Program:***	0	0	0
16	***Special Program:***	0	0	0
17	***Special Program:***	0	0	0
18	TOTAL EXPENDITURES	0	0	0
	List referenced expenditures made to comply with Mandated Requirements			
19		0	0	0
20		0	0	0
21	Total of Line 18 Expenditures Made to Comply	0	0	0

22	Special Program #1 Plant Square Feet	0
23	Special Program #2 Plant Square Feet	0
24	Special Program #3 Plant Square Feet	0

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DATA REGARDING RELATED PARTIES AND SELECTED EMPLOYEES

SCHEDULE F

Provider Name: _____ Period Ending: _____

Provider Number: _____ Unisys Num: _____

Data Concerning Related Parties other than Employees

	Related Party Type (2)	Related Party Name	Loans		Equity	Reporting Period Tranactions (4)	
			Ending Balance	Annual Interest Rate	Percent of Total	Nature of Transaction(s)	Schedule A Costs
	A	B	C	D	E	F	G
1							
2							
3							
4							
5							

Data regarding selected Employees including Related Parties (3)		Name Of Employee	Live on Premises? Yes/No	Hours Worked	Annual Compensation	Special Fringe Benefits	Auto Expense and Other	Related Party Yes/No
		H	I	J	K	L	M	N
☐ (1)	6	Administrator		0	0	0	/////	NO
☐ (1)	7	Assistant Administrator		0	0	0	0	NO
☐ (1)	8	Nursing Director		0	0	0	0	
☐ (1)	9							
☐ (1)	10							
☐ (1)	11							

Name of Employee (1)	S.S. Number	Facility Name	Position	Hours worked

(1) Check if Employee works in another facility. The bottom section MUST be completed for any employee listed on Lines 6 - 11 above working at another facility.

(2) Code related parties consistent with this definition (i.e.; Type 1b, 2d, etc.).

(3) Enter data for these three positions and for any other employees who meet either of the following criterib:

Related to facility per instructions for this form.

Compensation exceeds $25.00 per hour worked.(Does not include Related Party Agency Fees.)

(4) Include compensation, purchases, interest expense, leases and any other transaction affecting data reported on Schedule A.

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SCHEDULE G

RECONCILIATION

Provider No. _____

Period Ending _____

	EXPENSES	SCHEDULE	COLUMN	LINE	AMOUNT
1	Total Gross Salaries Reported	A	B	11, 17, 36, 37	
2	Total Gross Salaries per Form 941				
3	Difference (Line 1 less Line 2)	/ / / /	/ / / /	/ / / /	
4	Explanations of Line 3:				/ / / /
5					
6					
7					
8	Total Expenses Reported	A	B & C	38	
9	Total Expenses per Financial Statements				
10	Difference (Line 8 less Line 9)	/ / / /	/ / / /	/ / / /	
11	Explanations of Line 10:				/ / / /
12					
13					
14					
15					
16					
17					

REVENUES

1	Routine Revenues	B	E	5	
2	Incidential Revenues	A-4	1	19	
3	Other Operating Revenues	A-3	D	25	
4	Unrestricted Income				
5	Total Revenues Reported				
6	Total Revenues per Financial Statements				
7	Difference (Line 5 less Line 6)	/ / / /	/ / / /	/ / / /	
8	Explanations of Line 7:				/ / / /
9					
10					
11					
12					

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Provider Num: _____ Unisys Number: _____ Period Ending: _____

SCHEDULE H

CERTIFICATION BY TRUSTEE, OWNER, OFFICER, PARTNER OR ADMINISTRATOR OF PROVIDER

_____, _____
(Name) (Title)

of the _____
(Facility)

_____
(Street Address) (City) (State) (Zip Code)

MISREPRESENTATION OR FALSIFICATION OF ANY INFORMATION CONTAINED IN THIS COST REPORT MAY BE PUNISHABLE BY FINE AND/OR IMPRISONMENT UNDER STATE OR FEDERAL LAW.

I HEREBY CERTIFY that I have read the above statement and that I have examined the accompanying Cost Report, supporting schedules, and financial information prepared for the _____ _____, _____(Provider name(s) and numbers) for the Cost Report period beginning _____ and ending on _____, and that to the best of my knowledge and belief, it is a true, correct, and complete statement prepared from the books and records of the provider(s) in accordance with applicable instructions, except as noted.

SIGNED: _____
Officer or Administrator of Provider(s)

_____
Title

_____
Date Signed

IF THESE SCHEDULES WERE COMPLETED BY OTHER THAN THE OFFICER OR ADMINISTRATOR OF THE FACILITY, THEN THE PREPARER MUST SIGN THE FOLLOWING STATEMENT:
TO THE BEST OF MY KNOWLEDGE, ALL THE COSTS CONTAINED IN THESE SCHEDULES REASONABLY RELATE TO PATIENT CARE.

_____ _____
(Name of Preparer) (Signature of Preparer)

_____
_____
_____
_____ _____
(Address) (Telephone Number) (Date Signed)

DID AN INDEPENDENT PUBLIC ACCOUNTANT PREPARE FINANCIAL STATEMENTS FOR THE COST REPORTING PERIOD? ☐ **YES** ☐ **NO**
IF YES, A COPY MUST BE ATTACHED; IF NO, A COPY OF ALL WORK PAPERS MUST BE ATTACHED.

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PROVIDER NO._____

_____

_____

_____

_____

PROVIDER CERTIFICATION STATEMENT
LONG TERM CARE

State of New Jersey
Department of Human Services
Division of Medical Assistance and Health Services

BILLING MONTH/YEAR_____

I CERTIFY THAT THE FOREGOING INFORMATION IS TRUE, ACCURATE AND COMPLETE AND THAT THE ACCOMPANYING BILLING TRANSACTION FORMS CONTAIN ALL TERMINATIONS AND ADJUSTMENTS IN AMOUNTS DUE FOR PATIENTS THROUGH THE ENDING DATE OF THE BILLING MONTH. THOSE PATIENTS FOR WHOM PAYMENT IS REQUESTED WERE PROVIDED NURSING CARE IN THOSE AREAS ONLY OF THIS FACILITY WHICH ARE CERTIFIED FOR PARTICIPATION IN THE NEW JERSEY MEDICAID PROGRAM. I ALSO CERTIFY THAT FOR EACH MEDICAID PATIENT, A PHYSICIAN, HAS ESTABLISHED/REVISED A WRITTEN PLAN OF CARE AND CERTIFIED/RECERTIFIED, IN WRITING, THE NEED FOR NURSING CARE IN ACCORDANCE WITH N.J.A.C 10:63-1.5. I FURTHER CERTIFY THAT I AGREE TO KEEP SUCH RECORDS AS ARE NECESSARY TO DISCLOSE FULLY THE EXTENT OF SERVICES PROVIDED, AND TO FURNISH INFORMATION FOR SUCH SERVICES AS THE STATE AGENCY MAY REQUEST; AND THAT THE SERVICES COVERED BY THIS CLAIM AND THE AMOUNT CHARGED THEREFORE ARE IN ACCORDANCE WITH THE REGULATIONS OF THE NEW JERSEY MEDICAID PROGRAM AND THAT NO PART OF THE NET AMOUNT PAYABLE UNDER THIS CLAIM HAS BEEN PAID; AND THAT PAYMENT OF SUCH AMOUNT IS FROM FEDERAL AND STATE FUNDS AND WILL BE ACCEPTABLE AS PAYMENT IN FULL WITHOUT ADDITIONAL CHARGE TO THE PATIENT OR TO OTHERS ON HIS BEHALF. I ALSO CERTIFY THAT THE SERVICES HAVE BEEN FURNISHED IN FULL COMPLIANCE WITH THE NON-DISCRIMINATION REQUIREMENTS OF TITLE VI OF THE FEDERAL CIVIL RIGHTS ACTS AND SECTION 504 OF THE REHABILITATION ACT OF 1973.

NUMBER OF PRIVATE PATIENTS RECEIVING ADDITIONAL NURSING SERVICES

TRACHEOSTOMY	____	RESPIRATOR	____	I.V. THERAPY	____
HEAD TRAUMA	____	OXY. THERAPY	____	N.G. TUBE FEEDING	____
WOUND CARE	____				

NUMBER OF PRIVATE PATIENTS RECEIVING THERAPIES

PHYSICAL	____	SPEECH	____	OCCUPATIONAL	____

CENSUS

TOTAL GENERAL ASSISTANCE DAYS		____
TOTAL MEDICAID DAYS	+	____
TOTAL DAYS	=	____
TOTAL NUMBER LICENSE BEDS		____

I UNDERSTAND THAT FRAUD OR CONCEALMENT WILL BE PUNISHABLE UNDER APPLICABLE FEDERAL OR STATE LAW OR BOTH AND THAT THE FACILITY IS NOT ELIGIBLE FOR PAYMENT WITHOUT TIMELY RECEIPT OF THIS CERTIFICATE.

SIGNED _____ DATE _____
(Administrator or Officer)

NAME AND TITLE _____
(Print or Type)

CP-1-47 (Rev. 3/20/90)

Interested Persons see Inside Front Cover

APPENDIX E

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APPENDIX F

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

STATEMENT OF AVAILABLE INCOME FOR MEDICAID PAYMENT

Redetermination Date: _____ (MM/YY) SSA No.: _____ _____ (ELIG. EFF. DATE) _____ (PRINT DATE)

_____ (HSP (Medicaid) CASE NUMBER) _____ (LAST) _____ (FIRST) _____ (COUNTY)

Long-Term Care Facility: _____

Address: _____

SSI STATUS __ __ __ (LAC/PS) LTCF Provider No. _____ Previous Provider No.: _____

	LTCF		PA3L #1	PA3L #2	PA3L #3		Remarks
Effective Date							Admit, Change, Redetermination
Social Security Income							Claim #
Buy-In Amount							HIC #
Gross Social Sec. Benefit							
Railroad / Veteran							Claim #
Pension / Other Benefit							Specify
Other Income							Specify
Indemnity							Specify
Total Other Income	$						**Spouse's S.S.A. #**
Total Gross Income			$	$	$		M = Married Couple same LTCF G = VA A&A F = Foreign Pension P = VA Improved Pension
Workshop / Other							
Maint. / Home							Specify
Maint. / Spouse Dependent							Specify
Health Premium	$						Policy #
Total Exempt Income			$	$	$		
PNA	$						
Available Income			$	$	$		R = Representative Payee
Month of Adm. / Disch. Exempt							Specify
Resources	SPECIFY (i.e., address)						Circle One Yes No

Name and Address of Representative Payee

Signature: IM Worker: _____ Date: _____

Supervisor: _____ Date: _____

PA-3L (rev. 7/93)

BUREAU OF CLAIMS & ACCOUNT

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APPENDIX G

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

NOTIFICATION FROM LONG-TERM CARE FACILITY OF ADMISSION OR TERMINATION OF A MEDICAID PATIENT

I. PATIENT INFORMATION:

1. Name: _____ (LAST / FIRST) 2. Social Security Account No.: ___ - __ - ____
3. HSP(Medicaid) Case No.: _____ Confirmed By: _____ (CWA) ☐ Medicaid Only ☐ SSI
4. Authorized by: _____ Medicaid District Office

II. PROVIDER INFORMATION:

1. Provider Number: ____
2. LTCF Name: _____ 5. MEDICAID DISTRICT OFFICE
3. Address: _____ MDO Street Address: _____
4. City, State, Zip: _____ City, State, Zip: _____

III. ADMISSION INFORMATION:

1. Admission Date: ___ / ___ / ___ 2. Is this a new admission? ___Yes ___ No (If yes, send copy of MCNH-33 to CWA.)
3. Admitted to room number: _____ Bed number: _____
4. Admitted from: ___ Community/Boarding Home ___ Medicare to Medicaid ___ Psychiatric Hospital
   ___ Private to Medicaid (anticipated Medicaid effective date: ___ / ___ / ___ (Attach PA-4 to MDO copy)
   ___ Hospital ___ Other LTCF ___ Other (identify) _____
5. Name and Address of hospital/LTCF: _____ Admission Date: ___ / ___ / ___
6. If admitted from hospital/LTCF give the name/address of previous residence:
   _____
   (Hospital Name and Address or Home Address)

IV. TERMINATION INFORMATION:

1. Discharge Date: ___ / ___ / ___ 2. Has discharge been ordered by physician? ___Yes ___ No
3. Bed will be reserved in room number: ___ Bed number: ___
4. Discharged to hospital _____ (do not send MCNH-33 to CWA)
   NAME OF HOSPITAL
5. Discharged to: ___ Community (from LTCF/Hospital) ___ Other LTCF ___ Other (identify)
6. Death: ___ in LTCF ___ in hospital

V. CERTIFICATION:

The facility certifies that the patient will reside only in those areas of the facility which are certified for participation in the New Jersey Medicaid Program at the level of care authorized for this patient by the New Jersey Medicaid Program. The facility also certifies that upon discharge to a hospital, the patient's room/bed will be reserved for the full period of time covered by the New Jersey Medicaid Bed Reserve policy.

This form completed by: _____ Name _____ Title _____ Date _____ Signature

VI. CWA USE ONLY:

Medicaid Effective Date: ___ / ___ / ___
__ Medicaid Only - PA-3L attached
__ SSI only - no PA-3L required
__ Not eligible
__ Transcript requested - Date: ___ / ___ / ___
Remarks:

COUNTY WELFARE OFFICE
Street Address: _____
City and Zip: _____

Signature of Case Worker: _____ Date: _____

MCNH-33 (rev. 10/88) ORIGINAL — CWA CANARY/PINK — MDO GOLDENROD — PROVIDER

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APPENDIX H

CERTIFICATION OF NEED FOR PATIENT CARE IN FACILITY OTHER THAN PUBLIC OR PRIVATE GENERAL HOSPITAL

Form PA-4

To be completed by Public Assistance Agency _____ (Identify Agency)

Case Name _____ County Registration No. _____

Home Address _____ (Street) (Municipality) (County)

Health Services Program Case No. _____ (10 Digits) Person No. _____ (2 Digits) Date of Eligibility _____

Birth Date (or age) _____ Sex: M F (Circle correct letter) Veteran: Yes No (Circle correct word) Medicare No. _____ (If applicable)

Describe Current Living Arrangement _____

If in an Institution, Name _____ Admission Date _____

CERTIFICATION OF PHYSICIAN

This is to certify that the above named individual requires patient care for the chronically ill because:

1. *Diagnosis* (complete) _____

2. *Medication and/or treatment* _____

3. *Other therapy contemplated* _____

4. *Functional capacity of the patient:*	Independent	Needs Assistance	Potential for Independence	Comments
a. Bathing and personal hygiene				
b. Dressing				
c. Eating				
d. Toiletry				
e. Communication				
f. Ambulation				
g. Nursing care				

5. *Instructional needs*
   a. [ ] Teaching for independence in activities of daily living.
   b. [ ] Self-administration of drugs and medications.
   c. [ ] Diet and nutrition.
   d. [ ] Self care for special condition; e.g. colostomy, etc.
   e. [ ] Understanding medical condition.
   f. [ ] Prevention, care and treatment or complications.
   g. [ ] Counseling, emotional and motivational support.

6. *Emotional, behavior or social problems (explain):* _____

7. *Characteristics of major disability:* [ ] Static or stable [ ] Progressive [ ] Improving

8. *Is patient now receiving any medication or treatment?* [ ] Yes [ ] No (If "Yes," give details.) _____

9. *Is surgery or other therapy contemplated?* [ ] Yes [ ] No (If "Yes," give details.) _____

10. *Is care in nursing home or public medical institution NOW necessary?* [ ] Yes [ ] No

11. *If "Yes," in question 10, is future discharge contemplated?* [ ] Yes [ ] No

12. *Could patient be adequately cared for now in a facility providing a lower level of care than that provided by a skilled nursing home?* [ ] Yes [ ] No

13. *Could this patient be adequately cared for NOW in boarding home?* [ ] Yes [ ] No
    His own home? [ ] *Yes* [ ] *No Other facility?* (Describe) _____

14. *I further certify that, in my opinion, this patient does not require treatment for:* [ ] Active tuberculosis; or
    [ ] *A mental disease, defect or impairment in an institution for the mentally ill or mentally deficient.*

_____, M.D. Date _____

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APPENDIX I

PSYCHIATRIC EVALUATION

(NJ DIVISION OF MENTAL HEALTH & HOSPITALS 1994)

CLIENT'S NAME: _____ LAST _____ FIRST _____ M.I.

1 CLIENT LOCATION AND IDENTIFIERS - TO BE COMPLETED BY PERSON REFERRING CLIENT FOR EVALUATION

1.1 CODE OF COUNTY WHERE CLIENT IS TODAY (2 DIGITS; USE CODES AT RIGHT): [ ][ ] CODE

NOTE: FOR ANCORA, ENTER CODE 04. FOR CLIENTS OUTSIDE NJ, ENTER COUNTY CODE WHERE MEDICAID OFFICE WAS CONTACTED AND/OR WHERE CLIENT WILL RESIDE.

NEW JERSEY COUNTY CODES

01 - ATLANTIC	08 - GLOUCESTER	15 - OCEAN
02 - BERGEN	09 - HUDSON	16 - PASSAIC
03 - BURLINGTON	10 - HUNTERDON	17 - SALEM
04 - CAMDEN	11 - MERCER	18 - SOMERSET
05 - CAPE MAY	12 - MIDDLESEX	19 - SUSSEX
06 - CUMBERLAND	13 - MONMOUTH	20 - UNION
07 - ESSEX	14 - MORRIS	21 - WARREN

1.2 ORGANIZATION REFERRING THE CLIENT FOR A PSYCHIATRIC EVALUATION. __ CHECK HERE IF CLIENT IS IN THE COMMUNITY NOW.

1.3 TYPE OF ASSESSMENT A. __ INITIAL B. __ ANNUAL RESIDENT REVIEW

C. __ CHANGE IN BEHAVIOR (NURSING FACILITY RESIDENTS) D. __ OTHER (SPECIFY) _____

1.4 MEDICAID NUMBER (12 DIGITS) [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ] __ CHECK HERE IF NO MEDICAID NUMBER ASSIGNED

1.5 SOCIAL SECURITY NUMBER (9 DIGITS) [ ][ ][ ][ ][ ][ ][ ][ ][ ]

1.6 DATE OF BIRTH [ ][ ] MONTH [ ][ ] DAY [ ][ ] YEAR

1.7 ADMISSION DATE [ ][ ] MONTH [ ][ ] DAY [ ][ ] YEAR

1.8 DOES THE CLIENT USE A PRIMARY LANGUAGE OTHER THAN ENGLISH?

A. __ NO B. __ YES (SPECIFY) _____

C. IF "YES," PLEASE DESCRIBE HOW LANGUAGE NEEDS WERE MET TO CONDUCT THE PSYCHIATRIC EVALUATION.

_____

2 HEALTH AND ILLNESS - TO BE COMPLETED BY PERSON CONDUCTING THE PSYCHIATRIC EVALUATION

2.1 WHAT IS THE PRESENTING PROBLEM AND CHIEF COMPLAINT?

_____

_____

2.2 WHAT IS THE HISTORY OF THE PRESENT PSYCHIATRIC ILLNESS?

_____

_____

_____

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PSYCHIATRIC EVALUATION

(NJ DIVISION OF MENTAL HEALTH & HOSPITALS 1994)

CLIENT'S NAME: (LAST) _____ (FIRST) _____ (M.I.) ___

2 HEALTH AND ILLNESS (CONTINUED FROM PAGE 1)

2.3 WHAT IS KNOWN ABOUT THE PAST PSYCHIATRIC HISTORY; COURSE OF ILLNESS; AND MEDICAL HISTORY?

_____

_____

_____

2.4 PLEASE DESCRIBE PERTINENT CLIENT AND FAMILY HISTORY. INCLUDE THE CLIENT'S AGE, SEX, MARITAL STATUS, LIVING SITUATION AND PRIOR VOCATIONS. ALSO INCLUDE THE CLIENT'S RACIAL/ETHNIC, GEOGRAPHIC, AND RELIGIOUS BACKGROUND AND AFFILIATIONS.

_____

_____

_____

_____

_____

2.5 DID A LEGAL REPRESENTATIVE, FAMILY MEMBER, AND/OR SIGNIFICANT OTHER PARTICIPATE IN THE EVALUATION?

A. __ YES (SPECIFY): _____

B. __ NO (PLEASE EXPLAIN): _____

_____

2.6 WHAT SIGNIFICANT CLINICAL CHANGES HAVE OCCURRED IN THE PAST SIX MONTHS, I.E., IN SOCIAL FUNCTIONING AND/OR MENTAL AND PHYSICAL STATUS?

_____

_____

_____

3 MENTAL STATUS EXAMINATION

3.1 APPEARANCE AND ATTIRE: _____

3.2 ATTITUDE AND BEHAVIOR: _____

3.3 AFFECT AND MOOD: _____

3.4 ASSOCIATION AND THOUGHT PROCESS: _____

3.5 HALLUCINATIONS/DELUSIONS: _____

3.6 SUICIDAL/HOMICIDAL: _____

3.7 PERCEPTION: _____

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PSYCHIATRIC EVALUATION

(NJ DIVISION OF MENTAL HEALTH & HOSPITALS 1994)

CLIENT'S NAME: (LAST) _____ (FIRST) _____ (M.I.) ___

3 MENTAL STATUS EXAMINIATION (CONT. FROM PAGE 2)

3.8 SENSORIUM, MEMORY AND ORIENTATION: _____

3.9 INTELLECTUAL FUNCTIONING: _____

3.10 INSIGHT AND JUDGEMENT: _____

4 REVIEW OF SYSTEMS

4.1 H.E.E.N.T.: _____

4.2 CARDIOVASCULAR: _____

4.3 PULMONARY: _____

4.4 GASTROINTESTINAL: _____

4.5 GENITOURINARY/OB-GYN: _____

4.6 NEUROMUSCULAR: _____

4.7 SKIN: _____

5 NEUROLOGICAL FINDINGS:

5.1 CRANIAL NERVES: _____

5.2 MOTOR SYSTEM: _____

5.3 SENSORY SYSTEM: _____

5.4 DEEP TENDON REFLEXES AND PLANTAR REFLEXES (BABINSKI) OR OTHER PATHOLOGICAL REFLEXES: _____

5.5 STATION AND GAIT: _____

5.6 TREMORS/ABNORMAL MOVEMENT: _____

5.7 OTHER PERTINENT FINDINGS: _____

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PSYCHIATRIC EVALUATION

(NJ DIVISION OF MENTAL HEALTH & HOSPITALS 1994)

CLIENT'S NAME: (LAST) _____ (FIRST) _____ (M.I.) ___

6 NARRATIVE SUMMARY (INCLUDING THE CLIENT'S POSTIVE TRAITS, STRENGTHS, AND WEAKNESSES)

7 DIAGNOSES

7.1 AXIS I (PSYCHIATRIC DIAGNOSIS): _____

A. CODE FOR DIAGNOSIS ABOVE (FIVE DIGITS): ___ ___

B. DSM EDITION USED (CHECK ONE):

__ III-R __ IV

7.2 AXIS II (DEVELOPMENTAL DISORDERS AND PERSONALITY DISORDERS): _____

7.3 AXIS III (PHYSICAL DISORDERS AND CONDITION): _____

8 MEDICATIONS, TESTS, AND STUDIES

8.1 IDENTIFY ALL CURRENT MEDICATIONS AND DAILY DOSAGES OF EACH.

8.2 IDENTIFY MEDICATION (AND OTHER) ALLERGIES, INTOLERANCES, AND/OR INCOMPATIBILITIES.

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PSYCHIATRIC EVALUATION

(NJ DIVISION OF MENTAL HEALTH & HOSPITALS 1994)

CLIENT'S NAME: (LAST) _____ (FIRST) _____ (M.I.) ___

8 MEDICATIONS, TESTS, AND STUDIES (CONTINUED FROM PAGE 4)

8.1 SUMMARIZE BELOW RESULTS OF ANY SIGNIFICANT LABORATORY TESTS OR SPECIAL NEUROLOGICAL DIAGNOSTIC STUDIES.

_____

_____

8.3 ARE PSYCHOTROPIC MEDICATIONS PRESCRIBED? A. __ NO (SKIP TO SECTION B. ON PAGE 6) B. __ YES (GO TO 9 BELOW)

9 PSYCHOTROPIC MEDICATIONS

9.1 NAME OF MEDICATION	DAILY DOSAGE	TYPE OF THERAPY (CHECK ONE)	TYPE OF ADMINISTRATION (CHECK ONE)
A. _____	_____	__ ACTIVE __ MAINTENANCE	__ VOLUNTARY __ FORCED
B. _____	_____	__ ACTIVE __ MAINTENANCE	__ VOLUNTARY __ FORCED
C. _____	_____	__ ACTIVE __ MAINTENANCE	__ VOLUNTARY __ FORCED
D. _____	_____	__ ACTIVE __ MAINTENANCE	__ VOLUNTARY __ FORCED
E. _____	_____	__ ACTIVE __ MAINTENANCE	__ VOLUNTARY __ FORCED

9.2 ARE MEDICATIONS GIVEN TO AUGMENT THE ACTION OF MEDICATIONS ABOVE? A. __ NO B. __ YES (LIST NAMES, DOSAGES)

_____

9.3 SIDE EFFECTS OF MEDICATIONS ABOVE

A. __ NONE ARE KNOWN
B. __ AKATHISIA
C. __ AKINESIA
D. __ ANTICHOLINERGIC SYMPTOMS
E. __ EXTRA-PYRAMIDAL SYMPTOMS
F. __ PARKINSONIAN SYMPTOMS
G. __ POSTURAL HYPOTENSION
H. __ SEDATION
I. __ TARDIVE DYSKINESIA
J. __ OTHER/OR ELABORATION ON SIDE EFFECT

_____

9.4 MEDICATIONS NOW PRESCRIBED TO CONTROL THESE SYMPTOMS

A. __ NONE
B. _____
C. _____
D. _____
E. _____
F. _____
G. _____
H. _____
I. _____
J. _____

9.5 BASED ON THE SEVERITY OF SIDE EFFECTS, OR FOR OTHER REASONS, SHOULD MEDICATIONS OR DOSAGES BE ADJUSTED?

A. __ NO B. __ YES (PLEASE EXPLAIN): _____

_____

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PSYCHIATRIC EVALUATION

(NJ DIVISION OF MENTAL HEALTH & HOSPITALS 1994)

NOTE: THIS DOCUMENT SERVES AS A ONE-PAGE NOTIFICATION LETTER FOR OFFICIAL PURPOSES. NURSING FACILITIES RECEIVING THIS LETTER ARE REQUIRED TO PLACE A COPY IN THE CLIENT'S MEDICAL RECORD.

SECTION A. - TO BE COMPLETED BY PERSON REFERRING CLIENT FOR EVALUATION.

FAX OR MAIL FINDINGS TO:

A.1 FOR ANNUAL RESIDENT REVIEWS ONLY, ENTER FULL NAME OF NURSING FACILITY (NF) WHERE CLIENT RESIDES.
FOR ALL OTHER PSYCHIATRIC EVALUATIONS, ENTER NAME (NOT CODE) OF NJ COUNTY SELECTED ON PAGE 1, ITEM 1.1.

A.2 PERSON REFERRING CLIENT FOR EVALUATION: _____ NAME _____ ORGANIZATION OR RELATIONSHIP TO CLIENT

MAILING ADDRESS FOR REFERRAL SOURCE: _____

VOICE PHONE: (___) ___ - ____ FAX PHONE: (___) ___ - ____

SENDER: CAROL I. WEISS, M.S.W., PH.D., PASARR COORDINATOR, DMH&H - VOICE (609) 777-0821 FAX (609) 777-0662

RE: CLIENT'S NAME: (LAST) _____ (FIRST) _____ (M.I.) ___

A.3 CLIENT'S DATE OF BIRTH ___ MONTH ___ DAY ___ YEAR

A.4 __ CHECK HERE FOR A "RUSH" IN PROCESSING THIS EVALUATION

A.5 __ CHECK HERE IF THE CLIENT USES A PRIMARY LANGUAGE OTHER THAN ENGLISH (SPECIFY): _____

SECTION B. - TO BE COMPLETED BY THE PERSON CONDUCTING THE PSYCHIATRIC EVALUATION

HAVING ASSESSED THIS CLIENT AND THE AVAILABLE CLINICAL RECORDS, IT IS MY PROFESSIONAL OPINION THAT THE CLIENT:

B.1 __ NO __ YES HAS AN ACTIVE PSYCHOSIS

B.2 __ NO __ YES HAS A MAJOR MENTAL ILLNESS

B.3 __ NO __ YES HAS MENTAL HEALTH TREATMENT NEEDS THAT CAN BE MET IN A NURSING FACILITY (NF)
NOTE: B.3 AND B.4 CANNOT BOTH BE "YES," SINCE THE NF CANNOT PROVIDE SPECIALIZED SERVICES.

B.4 __ NO __ YES NEEDS "SPECIALIZED SERVICES" (FORMERLY KNOWN AS "ACTIVE TREATMENT") FOR BEHAVIORAL SYMPTOMS THAT REQUIRE 24-HOUR PSYCHIATRIC INPATIENT CARE.

B.5 FUTURE NEEDS FOR LESS THAN SPECIALIZED SERVICES (CHECK ALL THAT APPLY):

__ MEDICATION MONITORING __ LABORATORY TESTING (SPECIFY): _____

__ SUPPORTIVE COUNSELING __ FOLLOW-UP FOR CHEMICAL DEPENDENCY OR ABUSE

__ FOLLOW-UP CONSULTATIONS (SPECIFY): _____

SIGNATURE AND TITLE OF EXAMINER: _____ EXAM DATE: ___ MONTH ___ DAY ___ YEAR

PRINT NAME AND TITLE: _____ PHONE: (___) ___ - ____

SECTION C. - TO BE COMPLETED BY PSYCHIATRIST AT THE NEW JERSEY DIVISION OF MENTAL HEALTH & HOSPITALS

C.1 __ NO __ YES THIS CLIENT NEEDS "SPECIALIZED SERVICES" (SEE B.4 ABOVE)

C.2 __ NO __ YES THIS CLIENT NEEDS AN ANNUAL RESIDENT REVIEW FOR SERIOUS MENTAL ILLNESS

SIGNATURE: _____ REVIEW DATE: ___ MONTH ___ DAY ___ YEAR

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APPENDIX J

AT-RISK CRITERIA FOR NURSING FACILITY PLACEMENT REFERRAL TO THE MEDICAID OFFICE FOR PAS EVALUATION

The following is a list of "at-risk" criteria to assist the hospital in determining if a referral for long term care services, either in a nursing facility or in the community, is indicated.

I. **Medical**—Has the patient experienced any of the following:

1. **Catastrophic Illness** requiring major changes in life style and/or living conditions, i.e. Multiple Sclerosis, Stroke, Multiple Trauma, AIDS, Amputation, Neurological Disease, Cancer, Birth Defect(s), End Stage Renal Disease.
2. **Debilitation and/or Chronic Illness** causing progressive deterioration of self-care skills, i.e. Diabetes, Fractures, Progressive Pulmonary Disease, Severe Chronic Diseases, Spina Bifida.
3. **Multiple Hospital Admissions** within the past six (6) months. (Do not refer patients admitted directly from nursing facilities.)
4. **Previous Nursing Facility Admissions** within the past two (2) years.
5. **Major Health Needs,** i.e. tube feedings, special equipment or treatments, rehabilitative/restorative services.

II. **Social**—In addition to the medical criteria, does patient meet any of the following social situations:

1. Homeless.
2. Lives alone and/or has no immediate support system.
3. Primary caregiver is not able to provide required care services.
4. Lack of adequate support systems.

III. **Financial** (as of 01/01/94)—Does the patient meet any of the following income/assets tests:

1. Currently eligible for Medicaid.
2. Monthly income at/or below the current (as of 01/01/94) Medicaid institutional cap of $1,338.00 and:
   a) **Has no spouse in the community** and resources no greater than $2,000.00 (plus $1,500.00 burial fund), or
   b) **Has no spouse in the community** and resources at/or below $26,000.00 (plus $1,500.00 burial fund). This is an indication that the patient may **become** Medicaid eligible within the next six (6) months by spending down assets in a nursing facility as private pay, or
   c) **Has a spouse in the community** with combined countable resources at/or below $52,000.00 (plus $1,500.00 burial fund). This allows for calculation of the community spouse's resources under the Medicare Catastrophic Coverage Act of 1988.
3. Monthly income at/or below the current New Jersey Care . . . Special Medicaid Programs maximum monthly income limit of $581.00 and:
   a) **Has no spouse in the community** and resources no greater than $4,000.00 (plus $1,500.00 burial fund), or
   b) **Has no spouse in the community** and resources at/or below $28,000.00 (plus $1,500.00 burial fund). This is an indication that the patient may **become** Medicaid eligible within the next six (6) months by spending down assets in a nursing facility as private pay, or
   c) **Has a spouse in the community** with combined countable resources at/or below $56,000.00 (plus $1,500.00 burial fund). This allows for calculation of the community spouse's resources under the Medicare Catastrophic Coverage Act of 1988.

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APPENDIX K

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

PREADMISSION SCREENING ASSESSMENT

AUTHORIZATION	LEVEL	MOS	LOCUS OF CARE	SPECIAL CARE SERVICES
			___TRACK I-LONG-TERM PLACEMENT	___RESPIRATORY
1.	___	___	___TRACK II—SHORT TERM PLACEMENT	___COMA
2.	___	___	___TRACK III-COMMUNITY PLACEMENT	___NEUROLOGICALLY IMPAIRED YOUNG ADULT
3.	___	___	___CCPED (MODEL WAIVER)	___PEDIATRIC LTC
			___ACCAP	___AIDS/LTC
			___COMMUNITY	___MR/MI
			___DENIAL OF SERVICES	

___ /___ /___ Date Ref. to DDD/DMH&H

APPLICANT'S NAME (Last, First, Middle)	D.O.B. / /	SEX M( ) F( )	MARITAL STATUS S( ) M( ) W( ) D( ) SEP( )
ADDRESS	TELEPHONE NUMBER		
MEDICARE NUMBER SSA NUMBER	H.S.P. (Medicaid) Case Number		

RACE/ETHNICITY CODE: ___ (For Data Collection Purposes Only)

1 = American Indian/Alaskan Native
2 = Asian or Pacific Islander
3 = Black, Non-Hispanic Origin
4 = Hispanic
5 = White/Anglo, Non-Hispanic
6 = Other: _____

NAME OF FACILILTY (Current)	DATE OF ADMISSION / /	FLOOR WARD BLDG. / /
ADDRESS		ROOM NUMBER

INITIALLY ADMITTED FROM	NAME AND ADDRESS
Home ( ) Facility or Other ( )	

ATTENDING PHYSICIAN, TITLE	TELEPHONE NO.	RSN	ASSESSMENT DATE / /
ATTENDING PHYSICIAN, TITLE	TELEPHONE NO.	RSN	ASSESSMENT DATE / /
ATTENDING PHYSICIAN, TITLE	TELEPHONE NO.	RSN	ASSESSMENT DATE / /

PRIOR HOSPITALIZATIONS:

1. _____

2. _____

3. _____

( ) Preadmission Level of Care Determination
( ) Community Care Evaluation
( ) Psychiatric Hospital
( ) ICF/MR (Developmental Disabilities)
( ) Admission Level of Care Determination
( ) Periodic Review for Level of Care
( ) Request for Change in Level of Care
( ) Other: _____

PAS-1 (6/90)

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II. CLINICAL ASSESSMENT

Recent Hospitalization Dates: _____

Primary Diagnosis: _____

Secondary Diagnosis: _____

Does patient have a history of any of the following? (Circle Appropriate)	If YES, specify current treatments, compliance, unmet needs, problems.
A. **SKIN:** Rashes, Bedsores, Lesions, Infection	
B. **EYE:** Glaucoma, Cataracts, Blindness, Glasses, Discharge, Pain, Itching, Assymetry	
C. EAR: Deafness, Hearing Aid, Discharge, Pain, Infection	
D. **MOUTH/THROAT:** Difficulty Chewing/Swallowing, Missing Teeth, Gum Disease	
E. **BREAST:** Lump, Cyst, Pain, Discharge, Mammogram	
F. **RESPIRATORY:** Dyspnea, Asthma, Emphysema, TB, Apnea, Tracheostomy	
G. **CARDIOVASCULAR:** Heart Attack, Chest Pain, Irregular Rate, High Blood Pressure, Leg Ulcers, Edema	
H. **G.I.:** Ulcers, Bleeding, Diarrhea, Constipation, Liver/Gall Bladder Problems, Ostomy, Incontinency	
I. **G.U.:** Pain, Burning, Frequency, Urgency, Infection, Stones, Catheters, Ostomy, Incontinency	
J. **GYN:** Discharge, Abnormal Bleeding, Menses	
K. **MUSCULO-SKELETAL:** Paralysis, Missing Limbs, Pain, Weakness, Broken Bones, Congenital/Acquired Impairments, Arthritis, Edema	
L. **NEUROLOGICAL:** Effects of a Stroke, Speech Impairment, Seizures, Headaches, Coma	
M. **ENDOCRINE DISORDERS:** Diabetes, Thyroid	
N. **HEMATOLOGIC:** Anemia, Transfusions, Bleeding	
O. **ONCOLOGIC:** Tumor, Cancer	
P. **IMMUNE SYSTEM:** Allergy (Drugs/Food), Chronic Infection, AIDS, ARC, HIV+	
Q. **MENTAL ILLNESS:** (Schizophrenia, Paranoid, Major Affective)	
R. **MENTAL RETARDATION**	
S. **DEVELOPMENTAL DISABILITIES:** (CP, Epilepsy, Spina Bifida)	
T. **PROSTHESIS:** Limb, Joint, Dental, Eye	
U. **SURGERIES:** Type, Date	
V. **ACCIDENT/INJURY:** Recent	
W. **SUBSTANCE ABUSE:** Alcohol, Drugs, Tobacco	
X. **OTHER DISABILITIES-HEALTH PROBLEMS**	

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III. PEDIATRIC ASSESSMENT

A. Name of Parents/Foster Parents:: _____

B. Address: _____ City/Town _____ St _____ Zip _____

C. Telephone Number: (____) _____

D. BIRTH HISTORY: Gestational Age at Birth _____
APGAR Score: 1 Min. _____ 5Min. _____ Unknown _____
Birth Weight: _____ Head Circumference: _____

E. Prenatal Problems (Specify): _____

F. Neonatal Problems (Specify): _____

G. ACQUIRED INFECTIOUS DISEASES:

Chicken Pox	( )	Measles	( )	Mumps	( )	Rubella	( )
Meningitis	( )	Hepatitis	( )	AIDS	( )	Whooping Cough	( )

Other (Specify): _____

H. IMMUNIZATION STATUS: (Refer to Approved Schedule)

TYPE	DATES

I. GROWTH & DEVELOPMENT:
Current Wt. _____ Current Ht. _____ Current Head Circumference _____
Wt % For Age _____ Ht % For Age _____ H.C. % For Age _____

J. MILESTONES (Refer to Growth and Developmental Charts):
On Time ( ) Delayed ( ) (Specify): _____

K. Sleep Pattern & Environment: _____

L. Appearance/Dress: _____

M. Potential Risks/Safety: _____

COMMENTS (If required):

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IV. TREATMENTS AND DIAGNOSTIC STUDIES

A. RESULTS & DATES OF LAB AND OTHER DIAGNOSTIC STUDIES

B. MEDICATION (Administered by Self or Other____)

Drugs	Dose	Sig.

C. TREATMENTS, REHABILITATIVE THERAPIES SPECIAL EQUIPMENT

Type and Frequency:

O.T.

S.T.

P.T.

Other — e.g., Chest Therapy, Percussion/ Postural Drainage, Psychosocial, Skin Care

D. NUTRITIONAL STATUS

Diet (Specify: _____

Current Weight: _____

Weight Gain/Weight Loss _____

Appetite: Good ( ) Fair ( ) Poor ( )

Describe Nutritional & Hydration Status

Naso-Gastric Feedings _____

Gastrostomy _____

TPN _____

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V. MENTAL AND BEHAVIORAL STATUS

CHECK (X) APPROPRIATE STATUS	YES	NO	SOME TIME	COMMENTS
A. MENTAL – BEHAVIORAL				
01. Disoriented				
02. Confused				
03. Withdrawn				
04. Lethargic				
05. Fearful				
06. Anxious				
07. Suspicious (more than reasonable)				
08. Bizarre Behavior				
09. Inappropriate Behavior				
10. Agitated				
11. Assaultive				
12. Verbally Abusive				
13. Noisy				
14. Wanders				
15. Ritualistic				
16. Compulsive				
17. Delusional				
18. Hallucinatory				
19. Depression				
20. Sundowning				
21. Other				

B. COGNITIVE FUNCTIONS

	INTACT	IMPAIRED
1. Long-Term Memory		
2. Short-Term Memory		
3. Judgement		
4. Insight		

COMMENTS (If required):

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VI. FUNCTIONAL ASSESSMENT

	INDE-PENDENT	PARTIAL ASSIS-TANCE	TOTAL ASSIS-TANCE	COMMENTS RECENT CHANGES IN STATUS
A. ADL				
1. Eat/Feed				
2. Bathing				
3. Dressing				
4. Toileting				
5. Grooming				
6. Oral Hygiene				

	YES	NO	COMMENTS: (INCLUDE RECENT CHANGES IN STATUS)
B. INCONTINENCE			
1. Bladder			
2. Bowel			

	INDE-PENDENT	PARTIAL ASSIS-TANCE	TOTAL ASSIS-TANCE	COMMENTS RECENT CHANGES IN STATUS
C. MOBILITY				
1. Walking With/Without Aids				
2. Transfers				
3. Wheeling				
4. Climb Stairs				
5. Change Position				
6. Distance Walks				
7. Can Be Transported In A Car				
8. Wheelchair In Room				
9. Wheel/Walker In Hall				

	YES	NO	COMMENTS: (INCLUDE RECENT CHANGES IN STATUS)
D. IMPAIRMENT			
1. Hearing With/Without Aids			
2. Vision With/Without Aids			
3. Speech			
4. Communications			
5. Contractures			
6. Paralysis			
7. Amputation			
8. Memory			
9. Swallowing			
10. Chewing			

	INDE-PENDENT	PARTIAL ASSIS-TANCE	TOTAL ASSIS-TANCE	COMMENTS RECENT CHANGES IN STATUS
E. IADL'S				
1. Handles Own Finances				
2. Can Bank and Shop				
3. Can Prepare Simple Meals				
4. Can Do Own Light Housekeeping				
5. Personal Laundry				
6. Can Do Own Heavy Housekeeping				
7. Can Use Telephone				
8. Takes Own Medication				

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VII. SOCIAL ASSESSMENT

A. Caregiver/Friend

Name _____ Relationship _____

Address _____

Telephone Number: Home ( ) _____ Work ( ) _____

Employment: ____ Full Time ____ Part Time ____ Not Employed

Days/Hours Assisting: _____

Caregivers' health problems/limitations/concerns. (Please describe any problems or questions the caregiver has.)

B. Client's/Family's Perception of Care Needs:

( ) Patient wants to return home
( ) Household members want patient to return
( ) Unwilling to return, specify: _____
( ) Unable to return, specify: _____
( ) Willing to go to nursing facility
( ) Willing to return — environment unsafe

C. Identify Services/Social Support Client Family Requires:

ASSESSMENT CONCLUSION

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APPENDIX L

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

HEALTH SERVICE DELIVERY PLAN (H.S.D.P.)

1. Applicant Name _____ (PRINT LAST) _____ (FIRST) ____ (MI)

2. Male ☐ Female ☐ 3. Birthdate MM____ DD____ YY____

4. Medicaid (HSP) # _____

Primary Diagnosis: _____
Secondary Diagnosis: _____
Allergies: _____

NURSING DIAGNOSIS **RELATED TO**

I. EXCHANGING:
- a. Altered Nutrition: More than/less than Body Requirements _____
- b. Potential for Infection _____
- c. Constipation _____
- d. Diarrhea _____
- e. Bowel Incontinence _____
- f. Altered Patterns of Urinary Elimination _____
- g. Fluid Volume Excess/Deficit _____
- h. Decreased Cardiac Output _____
- i. Impaired Gas Exchange _____
- j. Potential for Injury _____
- k. Impaired Tissue Integrity _____
- l. Potential/Impaired Skin Integrity _____

II. COMMUNICATING:
- a. Impaired Verbal Communication _____

III. RELATING:
- a. Impaired Social Interaction _____

IV. VALUING:
- a. Spiritual Distress _____

V. CHOOSING:
- a. Ineffective Individual Coping _____
- b. Impaired Adjustment _____
- c. Ineffective Family Coping _____

VI. MOVING:
- a. Impaired Physical Mobility _____
- b. Activity Intolerance _____
- c. Impaired Home Maintenance Management _____
- d. Altered Health Maintenance _____
- e. Feeding Self-Care Deficit _____
- f. Bathing/Hygiene Self-Care Deficit _____
- g. Dressing/Grooming Self-Care Deficit _____
- h. Toileting Self-Care Deficit _____

VII. PERCEIVING:
- a. Sensory/Perceptual Alterations (Specify) (Visual, auditory, kinesthetic, gustatory, tactile, olfactory) _____

VIII. KNOWING:
- a. Altered Thought Processes _____

IX. FEELING:
- a. Pain _____
- b. Potential for Violence: Self-directed or directed at others _____
- c. Anxiety _____

OTHER: _____

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NAME: _____ HSP# _____

REQUIRED CARE NEEDS (Circle Appropriate)

	YES	NO	COMMENTS
1. **Additional Nursing Services:**			
a. Tracheostomy			
b. Respirator (ventilator)			
c. Head Trauma Stimulation/ ADV. NEUROMUSCULAR/ ADV. ORTHOPEDIC CARE			
d. Intravenous Therapy			
e. Wound Care			
f. Oxygen Therapy			
g. NGT &/or Gastrostomy			
2. **Basic Facility Nursing Services**			
a. PRN Oxygen/Inhalation Rx			
b. Suctioning			
c. Apnea Monitoring			
d. Temperature Control			
e. Injectable Medications			
f. Venipuncture			
g. Preparation of Medications			
h. Cath/Tube Insert/Irrigate			
i. Aseptic Dressings			
j. Preventive Skin Care			
k. Ostomy Care			
l. Special Skin Care			
m. Decubitus Ulcer/Dec Bed			
n. Mobility Assistance			
o. Speech Therapy			
p. Occupational Therapy			
q. Physiotherapy			
r. Durable Medical Equipment			
s. Bathe/Dress/Feed/Assist			
t. Positioning/Transfer			
u. Toilet Assist/B&B Retr.			
v. Meal Prep/Food Shopping			
w. Housekeeping/Laundry Assist			
x. Transportation			
y. Sensory Stimulation/Assist			
z. Medical Day Care			
zz. Respite Care			
aa. Supervision for Confused or Disruptive Behavior			
bb. Community Support Services Assist			
cc. Legal/Financial Assist			
dd. Alternative Housing Arrangements			
ee. Mental Health Support			
ff. Pt/Fam. Teaching Counseling			
gg. Monitor Health Status/Medical Regimen Cardiac, Resp, Seizure			
hh. Other			

ii. PASARR

1) Neurological (date completed) _____

Cat Scan _____ H&P _____ Thyroid Studies _____ Other _____ ___

2) MI _____

3) MR _____

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HEALTH SERVICE DELIVERY PLAN (H.S.D.P.)

1. Applicant Name _____ PRINT LAST _____ FIRST ____ MI

DETERMINATION SUMMARY

SERVICE AUTHORIZATION

NF
YES _____
2.5 HOURS _____
ADDITIONAL NURSING SERVICES _____
DENIAL OF NF SERVICES _____

LOCUS OF CARE

_____ TRACK I
(LONG TERM PLACEMENT)
_____ TRACK II
(SHORT TERM PLACEMENT)
_____ TRACK III
(COMMUNITY PLACEMENT)

SPECIAL CARE BEDS
_____ Respirator
_____ Coma
_____ Neurologically Impaired Young Adult
_____ Pediatric LTC
_____ AIDS LTC
_____ Other _____

WAIVER PROGRAMS
_____ CCPED
_____ Model Waiver
_____ ACCAP

_____ Community

_____ Months

RSN: _____

DATE: _____

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APPENDIX M

State of New Jersey
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

ALAN J. GIBBS
Commissioner

SAUL M. KILSTEIN
Director

DATE:

Dear:

The _____County Medicaid District Office has recently assessed your health care needs and reviewed your medical, nursing and social records during the pre-admission screening or periodic reassessment process. The evaluation process has resulted in the following determination:

( ) **You are approved for Track III home care services.** The hospital discharge planning staff will arrange for services to be provided in your home. Shortly after you are discharged home, a case manager from this office will be contacting you to discuss how the services are being provided.

( ) **You are approved for nursing facility placement.**
( ) Track I long-term placement
( ) Track II short-term placement

Please present this letter to the nursing facility admission's office as proof of Medicaid's authorization for your care in a nursing facility. In the event you are not admitted to a nursing facility within six (6) months from the date of this letter, the approval is no longer valid. After you are in a nursing facility, you will periodically be reassessed to determine whether you continue to meet the Medicaid requirements for nursing facility placement.

( ) **You are approved for placement in _____ which is a special care unit of a nursing facility.** In the event you are not admitted to this nursing facility within six (6) months from the date of this letter, the approval is no longer valid. After you are in a nursing facility, you will periodically be reassessed to determine whether you continue to meet the Medicaid requirements for nursing facility placement.

NOTE: THE APPROVAL CHECKED ABOVE IS CONTINGENT UPON THE FINANCIAL ELIGIBILITY DETERMINATION FOR MEDICAID BY YOUR COUNTY WELFARE AGENCY/BOARD OF SOCIAL SERVICES.

The form PA-3L (Statement of Availability Income for Medicaid Payment), informing you of your financial obligation, will be sent to you by the County Welfare Agency/Board of Social Services. You may be required to contribute

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towards the cost of your nursing facility care from your monthly income. For questions regarding this statement, please contact the County Welfare Agency/Board of Social Services at _____.

Further, as a Medicaid resident of a nursing facility, you are entitled to an amount of money each month for your personal needs. The personal needs allowance (PNA) comes from your monthly income and is your money to spend as you wish. You are also allowed to maintain your supplemental insurance (i.e. Blue Cross/Blue Shield) and have the premiums deducted from your monthly income. Medicaid will pay the Medicare medical insurance premium (Medicare Part B) if you are eligible for such coverage. If you have any questions about your PNA, contact the social worker in the nursing facility or call the local Medicaid District Office in your county.

If you have any questions concerning the Medicaid Program or this letter, please contact this Medicaid District Office at ( )_____.

Sincerely,

_____
Medicaid Regional Staff Nurse

_____
Medicaid District Office

_____
Address

c: County Welfare Agency/Board of Social Services

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APPENDIX N

State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION MEDICAL ASSISTANCE AND HEALTH SERVICES

LOCAL AREA OFFICE

TELEPHONE

AREA CODE

ADDRESS REPLY TO

POST OFFICE BOX

Date

Dear

The Medicaid District Office has recently reviewed your medical, nursing and social history during the PreAdmission Screening process. Based upon the available evidence during this review:

( ) You **do not** meet the requirements for nursing facility care as defined by the New Jersey Health Services Program and set forth in N.J.A.C. 10:63-1.2 and 10:63-2.

( ) You **no longer** meet the requirements for nursing facility care as defined by the New Jersey Health Services Program and set forth in N.J.A.C. 10:63-1.2 and 10:63-2. Medicaid payment for your care in a nursing facility will continue until discharge, but not beyond twenty (20) days from the date of this letter.

If you or your family wish to exercise your right to appeal this decision, you or someone authorized to act on your behalf, may submit a request for a fair hearing in accordance with N.J.A.C. 10:49-10.3 to:

Office of Legal and Regulatory Liaison
Division of Medical Assistance and Health Services
Mail Code #3
CN-712
Trenton, NJ 08625-0712

Such requests must be submitted in writing within twenty (20) days from the date of this letter. If a hearing is granted and you are currently Medicaid eligible, Medicaid will continue to pay for your care until a final decision is made.

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Please be advised you may represent yourself, obtain legal counsel or authorize a friend, relative, or other spokesperson to represent you at the hearing.

Sincerely,

_____
Medicaid Regional Staff Nurse
_____ Medicaid District Office

cc: CWA

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APPENDIX O

SECTION Q: Resident Classification

1. Payment Source
   - Private |____|
   - Medicare |____|
   - Medicaid |____|
   - Other _____

2. Requires Basic Nursing Services (NJAC 10:63-1.3) |____|

3. Requires Additional Nursing Services (NJAC 10:63(f)4) as below: |____|

   - Trachestomy |a____|
   - Use of Respirator |b____|
   - Head Trauma Stimulation/ advanced neuromuscular/ orthopedic care |c____|
   - Intravenous Therapy |d____|
   - Wound Care |e____|
   - Oxygen Therapy |f____|
   - Nasogastric tube feeding and/or Gastrostomy |g____|

_____ _____ _____
Signature of RN Coordinator License Number Date

Signatures of Others Who Completed Part of the Assessment:

_____ _____
Name Title

_____ _____
Name Title

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State of New Jersey
Department of Human Services
Division of Medical Assistance and Health Services

APPENDIX P

REQUEST FOR PRIOR AUTHORIZATION FOR MENTAL HEALTH SERVICES

PA#12 00138003

1. Recipient's Last Name	First Name	MI	2. Recipient's Street Address	Telephone Number

3. HSP (MEDICAID) Case No.	4. Person No.	5. Date of Birth	6. Sex ☐ Male ☐ Female	City	State	ZIP Code

7. Place of Service - Name and Address

8. PROVIDER OF SERVICE INFORMATION

Telephone Number

Medicaid Provider Number (Enter only when not printed below)

Name and Address

CLINICAL INFORMATION

9. Brief Clinical History

10. Present Clinical Status (To support request)

11. Diagnosis and Code (Must Conform With ICD-9-CM)

12. Treatment Request

	Frequency Indicate Number			Length Of Session (Check)				
	Per Week	Per Month	Per Year	1 1/2 HR	1 HR	1/2 HR	1 Day	1/2 Day
A. Psychotherapy, Individual								
B. Psychotherapy, Group								
C. Family Therapy								
D. Family Therapy/Conference								
E. Partial Hospitalization								
F. Partial Care								
F. Medication Management								
H. Psychological Testing By Code Number								

13. REQUESTED DATE(S)
From: _____ Thru: _____

14. AUTHORIZED DATE(S)
From: _____ Thru: _____

15. Reviewer ID Reviewer Title

16. PRIOR AUTHORIZED SERVICES DETAIL (MAXIMUM OF 5 SERVICES) GRAY SHADED AREA FOR DIVISION USE ONLY

A.	B. PROCEDURE & MODIFIER CODE REQUESTED	C. PROCEDURE & MODIFIER CODE APPROVED	D. Units Requested	E. Units Approved	F.	G.	H. Description of Service	I. TOTAL FEE REQUESTED	J. FEE APPROVED	K.	L.

FD-07 (Rev. 9/91)

FISCAL AGENT COPY

Medicaid Part 1 of 2

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APPENDIX Q

FISCAL AGENT BILLING SUPPLEMENT

AGENCY NOTE: The Fiscal Agent Billing Supplement is appended as a part of this chapter but is not reproduced in the New Jersey Administrative Code. When revisions are made to the Fiscal Agent Billing Supplement, replacement pages will be distributed to providers and copies will be filed with the Office of Administrative Law. For a copy of the Fiscal Agency Billing Supplement, write to:

UNISYS
P.O. Box 4801
Trenton, New Jersey 08619-4801

or contact:

Office of Administrative Law
Quakerbridge Plaza, Building 9
CN-049
Trenton, New Jersey 08625-0049

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Child Protective Services Investigations and Determinations of Abuse and Neglect

Proposed New Rules: N.J.A.C. 10:129A

Authorized By: William Waldman, Commissioner, Department of Human Services.
Authority: N.J.S.A. 9:6-8.15.
Proposal Number: PRN 1994-487.

Submit comments by October 6, 1994 to:
Barbara Kraeger
Operational Policy and Manual Unit
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Division of Youth and Family Services has undertaken a project to review and incorporate existing Division policy contained in the Division's Field Operations Casework Policy and Procedures Manual into the New Jersey Administrative Code as rules.

The Operational Policies to Rules project, OPTR, consists of an advisory body of 90 members which includes family and child advocates, foster parent associations, Legal Services, the Public Advocate, the Association for Children of New Jersey, DYFS field staff, and other agency representatives. Through the OPTR Advisory Group, the OPTR project is a community-based process involving the affected public, private non-profit representative groups and governmental agencies. This process consists of a thorough and full-scale study and reevaluation of existing Division policies, procedures, and practices, and will result in revision of many of those policies, procedures, and practices.

This proposal, addressing the Division's Child Protective Services Investigations and Determinations of Child Abuse and Neglect, is a product of the OPTR project initiated by the Division to subject those policies which have widespread coverage, continuing effect or a substantial impact on the rights or legitimate interests of the regulated public to the rulemaking process required by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. It differs significantly from current Division policy primarily in the areas of notifications of investigation findings and retention of information about persons alleged or found to be perpetrators of child abuse or neglect.

The most significant changes from the current policy and practice are summarized as follows:

- Three investigation findings catagories are defined. N.J.A.C. 10:129A-3.3.
- The requirement that the Division will notify all principals in a child protective service investigation of investigation findings. N.J.A.C. 10:129A-3.5.
- An emphasis that a child and his or her family have the right to be treated with respect and in a fair and professional manner. Persons alleged or confirmed as perpetrators of child abuse or neglect also have rights which must be respected. Adherence to clear, consistent standards and guidelines ensures that investigations are thorough, that vulnerable children are protected, and that the determination of whether a person was responsible for abusing or neglecting a child is made in accordance with clearly defined and specified standards and guidelines.

The Division's Field Operations Manual on Protective Services contains other material not regulatory in nature, such as case practice guidelines, examples of casework problems and statements of philosophy. This manual will remain in existence but will be revised to reflect these proposed new rules upon adoption.

A summary of the proposed rules follows:

N.J.A.C. 10:129A-1.1 gives the source of the Division's authority to establish standards.

N.J.A.C. 10:129A-1.2 states the purpose of these rules.

N.J.A.C. 10:129A-1.3 gives the scope of these rules.

N.J.A.C. 10:129A-1.4 gives the definitions used in these rules.

N.J.A.C. 10:129A-2.1 states the kinds of referrals subject to investigation and specifies the activities required in general child protective service investigations.

N.J.A.C. 10:129A-2.2 references the time frames for initiating an investigation.

N.J.A.C. 10:129A-2.3 states the persons whom the Division must contact during an investigation.

N.J.A.C. 10:129A-2.4 states under what circumstances the Division shall provide services for a child and under what authority.

N.J.A.C. 10:129A-2.5 states the general procedures for conducting a protective services investigation.

N.J.A.C. 10:129A-2.6 states when the Division shall request law enforcement assistance.

N.J.A.C. 10:129A-2.7 states what information is provided during an investigation.

N.J.A.C. 10:129A-3.1 states what information may be provided to the child subject of an investigation and what information shall be provided to the parent, caretaker, chief administrator of an institution, or temporary caretaker.

N.J.A.C. 10:129A-3.2 specifies information provided to the alleged perpetrator.

N.J.A.C. 10:129A-3.3 explains the three investigation findings categories, the requirement for attempting to determine who the perpetrator is for each allegation, and the time frame for making the findings determination.

N.J.A.C. 10:129A-3.4 states that no finding requires or precludes certain actions by the Division.

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N.J.A.C. 10:129A-3.5 states the requirement for providing notification to parents, certain caretakers, children, alleged perpetrators, and perpetrators of investigation findings.

N.J.A.C. 10:129A-3.6 specifies which information collected during a child protective service investigation is entered into the Central Registry.

Social Impact

A positive social impact is expected from these rules which specify fair and equitable treatment of those individuals who are the principals in child protective services investigations. They define the specific rights of persons who are alleged to be perpetrators of child abuse or neglect, and those of persons who have been determined to have abused or neglected a child. Finally, these rules assure the public that child protective services investigations will be uniform, thorough, and fair.

Economic Impact Statement

It has not yet been determined what impact these rules will have on the Division's budget.

The Division received 80,009 referrals in 1992. Of these, 50,043 were referrals which alleged abuse or neglect of a child and, therefore, required a child protective service investigation. These investigations resulted in 17,499 determinations that child abuse or neglect was substantiated.

With the specified notification and investigation processes, there is a strong potential for an increase in staff time for conducting investigations and data processing.

The Division's budget already includes personnel to investigate reports of child abuse and neglect. The percentage of staff time used for these activities is not among the data which is collected by the Division.

Regulatory Flexibility Statement

The proposed new rules do not impose any reporting, recordkeeping or compliance requirements on small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required. The proposed new rules describe the standards and procedures for the investigation and determination of child abuse and neglect performed by the Division.

Full text of the proposed new rules follows:

CHAPTER 129A
CHILD PROTECTIVE SERVICES INVESTIGATIONS AND DETERMINATIONS OF ABUSE AND NEGLECT

SUBCHAPTER 1. GENERAL PROVISIONS

10:129A-1.1 Authority

The Division of Youth and Family Services, Department of Human Services, is authorized under N.J.S.A. 9:6-8.11 and 30:4C-11 and 12 to investigate allegations of child abuse and neglect and to determine whether a child has been abused or neglected.

10:129A-1.2 Purpose

The purpose of this chapter is to establish rules for the Division's child protective services investigations and decision-making regarding the findings resulting from investigations, and to specify and ensure the rights of persons named as perpetrators, parents, children, caretakers, temporary caretakers, institutional caretakers, and referral sources.

10:129A-1.3 Scope

The provisions of this chapter shall apply to each child who has been alleged to be abused or neglected, each child at risk of abuse or neglect, or each child who may be at risk due to treatment of medical conditions by spiritual means alone, their parents, caretakers, temporary caretakers, institutional caretakers, persons named as perpetrators of child abuse or neglect, referral sources, and the Division.

10:129A-1.4 Definitions

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

"Caretaker" means a foster parent, adoption home parent, or other person who has assumed full time physical custody of a child, but does not include an institutional caretaker or temporary caretaker as defined below.

"Department" means the New Jersey Department of Human Services.

"Division" means the Division of Youth and Family Services, New Jersey Department of Human Services.

"Finding" means the official determination by the Division of the results of a child protective services investigation.

"Institution" means any facility, public or private, in-state, which provides children with out-of-home care, supervision or maintenance. The term institution includes, but is not limited to, a correctional facility, detention facility, treatment facility, public or private day school, residential school, shelter, hospital, camp, day care center that is licensed or should be licensed, foster homes, group homes and registered family day care homes.

"Institutional caretaker" means a teacher, employee or volunteer, whether compensated or uncompensated, of an institution or day school who is responsible for the child's welfare and any other staff person of an institution, regardless of whether or not the person is responsible for the care or supervision of the child. Institutional caretaker also includes the chief administrator responsible for the operation of an institution or facility.

"Investigation" or "child protective service investigation" means the activity of gathering all information relevant to making a determination as to whether child abuse or neglect occurred.

"Office manager" means a Division employee charged with the direction of a field office of the Division.

"Perpetrator" means a person who has been determined by the Division to have inflicted or allowed to be inflicted child abuse or neglect.

"Protective custody" means the taking of a child into custody by a physician, director of a hospital or his or her designee pursuant to N.J.S.A. 9:6-8.16.

"Temporary caretaker" means a person who has assumed temporary care, custody, or control of a child but does not include an institutional caretaker or caretaker as defined above and does not include a police officer acting in an official capacity.

SUBCHAPTER 2. CHILD PROTECTIVE SERVICE INVESTIGATION

10:129A-2.1 Situations requiring investigations

(a) A Division representative will be assigned to and shall investigate each referral presenting reasonable cause to believe that a child may be an abused or neglected child and each referral stating that a child has been taken into protective custody.

(b) Each referral in which the harm alleged to a child is the result of treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall be handled by the Division in accordance with this chapter and N.J.A.C. 10:133A and 10:133C.

(c) A Division representative shall conduct a child protective service investigation in response to each referral alleging child abuse or neglect on a military installation, to the extent permitted by the base commander, in accordance with U.S. Department of Defense Directive 6400.1, this chapter and N.J.A.C. 10:133A.

(d) A Division representative shall investigate each referral alleging institutional medical neglect of a child who is in a health care facility, including a child who is identified as a disabled infant with a life threatening condition as per "The Child Abuse Prevention, Adoption, and Family Services Act of 1988," P.L. 100-294, 42 U.S.C. 5101 et seq.

10:129A-2.2 Time frames for initiating an investigation

The Division representative shall begin his or her investigation in accordance with time frames set forth in N.J.A.C. 10:133A-1.10, Responding to referrals and applications.

10:129A-2.3 Contacts during an investigation

(a) The Division representative shall, in conducting an investigation, interview the child subject of the referral in accordance with the child's ability to cope with the investigation process.

(b) The Division representative shall interview the following persons, as applicable:

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1. The parent, caretaker, temporary caretaker responsible for the child at the time of the incident, or institutional caretaker responsible for the child at the time of the incident;
2. Any other child who resides in the same home;
3. Any other adult member of the household in which the child lives;
4. Any identified witness to the incident; and
5. Each alleged perpetrator.

(c) The Division representative shall, in conducting an investigation, make contact with those persons who, by virtue of their relationship to the child, family or the incident, may have information necessary to:
1. Determine whether or not a child is an abused or neglected child;
2. Assess the needs or problems of the child and his or her family;
3. Determine the appropriate intervention or service; or
4. Arrange for service provision.

10:129A-2.4 Evaluations, treatment and services

(a) The Division representative shall obtain permission from a parent or, in the absence of such permission, obtain a court order to arrange for the child and each of his or her siblings and any other child in the household to receive appropriate medical evaluation and treatment whenever:
1. The child has suffered serious physical harm;
2. The allegation or other information gathered indicates that the child suffered internal injury; or
3. The allegation or other information gathered indicates that the child suffered sexual abuse.

(b) Whenever a child has been removed from his or her home, the Division representative shall arrange for the child and each of his or her siblings or any other child in the household to receive appropriate medical evaluation and treatment, pursuant to N.J.S.A. 9:6-8.30.

(c) With parental cooperation or with a court order, the Division representative may arrange for a psychiatric or psychological evaluation for the child, whenever the Division representative has reason to believe that the allegation or other information gathered indicates that the child may have suffered serious emotional harm.

(d) The Division shall provide services as necessary to a child or to his or her family within the limits of legislative appropriations to all eligible children and families in similar circumstances. The provision of services shall also be subject to limitations due to actual ability of the Division to provide such services directly or by purchasing such services from appropriate privately sponsored agencies or institutions.

10:129A-2.5 General procedures for conducting an investigation

(a) The Division representative shall, in conducting the investigation:
1. Observe the physical and emotional state of the child alleged to be abused or neglected and the physical evidence of harm or injury to the child that is visible without disrobing the child, except as described in (b)3 below;
2. Observe the physical and emotional state of the parent, caretaker, temporary caretaker, institutional caretaker, or alleged perpetrator responsible for the child at the time of the alleged abuse or neglect;
3. Observe the physical surroundings and residence of the child when relevant to the investigation; and
4. Assess the harm or risk of harm to the child and each of his or her siblings or any other child in the home or in the care of the alleged perpetrator.

(b) The Division representative may, in conducting the investigation:
1. Except as in N.J.A.C. 6:29-9.2(a)7, interview the child subject of the investigation and other children in the household or institution apart from his or her parent, caretaker, temporary caretaker or institutional caretaker;
2. Make unannounced visits to the child's residence or place where the child or parents are located;
3. Remove, move or cause to be moved or removed only that clothing necessary to view suspected injuries located on portions of the child's body covered with clothing. This shall be done in a manner consistent with the child's sense of privacy, and in consideration of the age, sex and emotional state of the child and the need to limit the number of physical examinations the child may undergo. Except in emergency situations, this shall be done only in the presence of an adult supportive of the child; or
4. Arrange for the child's injuries or harm to be photographed, whenever there is visible indications of harm or injuries.

10:129A-2.6 Law enforcement assistance

(a) The Division representative shall request appropriate assistance in conducting an investigation from local and state law enforcement officials pursuant to N.J.S.A. 9:6-8.28 and 8.29 whenever:
1. The Division representative needs personal protection;
2. The nature of the case suggests it, for example, death of a child;
3. There is an immediately life-threatening situation; or
4. Violence is occurring or is immediately threatened.

10:129A-2.7 Information provided during investigation

(a) Except for cases where the police, prosecutor or Deputy Attorney General has determined that such action would impede investigative or litigation efforts and as limited by (b) below, when a child has been interviewed or observed pursuant to N.J.A.C. 10:129A-2.5, without his or her parent's or caretaker's knowledge or consent, the Division representative shall notify the parent of the child subject of the investigation and the caretaker of the child subject of the investigation, if the child will remain in the custody of the caretaker, as soon as possible after interviewing or observing the child or any of his or her siblings that the child(ren) has been interviewed or observed.

(b) When an investigation is conducted in an institution, and any child other than the child subject of the investigation are interviewed without the knowledge and consent of the parent, the Division shall not be obligated to notify the parents of those children of the investigation, except when abuse or neglect is substantiated and the child was subject of that abuse or neglect.

(c) When an emergency removal is made pursuant to N.J.S.A. 9:6-8.29, the Division representative shall make every reasonable effort to notify the child's parent, and the caretaker, temporary caretaker or institutional caretaker responsible for the child at the time of the removal.

(d) A Division representative shall immediately serve or attempt to serve written notice upon the parent, caretaker, and chief administrator of an institution from which the child was removed, whenever a child has been taken into protective custody as defined herein and shall begin a child protective service investigation immediately.

SUBCHAPTER 3. INFORMATION PROVIDED ABOUT THE INVESTIGATION AND FINDINGS

10:129A-3.1 Informing the child, parent, caretaker, institutional caretaker about the investigation

(a) Except for cases where the police, prosecutor, or Deputy Attorney General has determined that such action would impede investigative or litigation efforts, the Division representative shall inform the child subject of an investigation in accordance with the child's capacity to understand and cope with the information and shall inform the child's parent or caretaker with physical custody at the time of the incident; the parent with whom the child normally resides; the parent to whom the child will be returned, if the child is in an institution at the time of the incident; and the chief administrator of the institution in which the child may have been abused or neglected:
1. That a child protective service referral has been made, the nature of the allegation(s), and that an investigation will be conducted;
2. Of the names and telephone numbers of the Division representative assigned to investigate and his or her supervisor; and
3. That the Division is responsible for conducting an investigation pursuant to N.J.S.A. 30:4C-11 and 12 and 9:6-8.11.

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(b) The information to be provided by the Division representative in accordance with the provisions of (a) above, shall be provided at the time of the initial contact between the Division representative and each person interviewed and named in (a) above.

(c) The Division representative shall inform the temporary caretaker of any child alleged to be an abused or neglected child who is in the care of that temporary caretaker at the time of the investigation of the provisions of (a) above, when that information is necessary for the temporary caretaker to provide care for the child.

10:129A-3.2 Information provided to alleged perpetrator about the investigation

(a) The Division representative shall inform each person specifically alleged to be a perpetrator of child abuse or neglect, upon initial contact regarding the provisions of N.J.A.C. 10:129A-3.1(a) and that he or she has been named the alleged perpetrator of child abuse or neglect, except for cases in litigation and for which the police, prosecutor, or Deputy Attorney General has determined that providing such information would interfere with the proceedings, or cases in which providing such information will jeopardize the investigation.

(b) The information to be provided by the Division representative in accordance with the provisions of N.J.A.C. 10:129A-3.1(a), shall be provided at the time of the initial contact between the Division representative and each alleged perpetrator interviewed unless the police, prosecutor, or Deputy Attorney General advises the Division representative to delay providing the information, or cases in which providing such information will jeopardize the investigation.

10:129A-3.3 Investigation findings

(a) The Division representative shall evaluate the available information and, for each allegation, determine whether child abuse or neglect has occurred and shall make a finding of:

1. "Substantiated" when the available information, as evaluated by the Division representative, indicates that a child is an abused or neglected child as defined in N.J.A.C. 10:133-1.3 because the child has been seriously harmed or placed at risk of serious harm by a parent, caretaker, temporary caretaker or institutional caretaker.

i. A child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall not, for this reason alone, be considered to be an abused or neglected child, nor shall this condition preclude the Division from providing service or seeking court relief as in N.J.A.C. 10:129A-3.4 below;

2. "Not substantiated" when the available information, as evaluated by the Division representative, provides some indication that a child was harmed or placed at risk of harm, but does not indicate that the child is an abused or neglected child as defined in N.J.A.C. 10:133-1.3; or

3. "Unfounded" when:

i. There is no evidence of conduct that would pose risk to the child;

ii. There is no evidence that a parent, caretaker, temporary caretaker, or institutional caretaker was involved;

iii. There is no evidence that a child was involved; or

iv. The available information indicates that the conduct of the parent, caretaker, temporary caretaker, or institutional caretaker was necessary in order to prevent a greater harm to a child.

(b) The Division representative shall attempt to determine who the perpetrator is for each allegation of child abuse or neglect.

(c) Except for good cause approved by the office manager, the determination of investigation findings shall be made within 45 days of the Division's receipt of the referral.

10:129A-3.4 Service offering and court relief

No finding shall require nor preclude the Division from offering and providing necessary services to the child and family and shall not preclude the Division from seeking needed court relief.

10:129A-3.5 Notification of findings

(a) Except for cases in litigation and for which the police, prosecutor, or Deputy Attorney General has determined that such notification would interfere with the proceedings, a Division representative shall provide notification of the specific finding of the investigation to those persons specified in (c) through (g) below.

(b) Unless for good cause approved by the office manager, the Division shall notify persons specified no later than 60 days from the date upon which the Division received the referral or from which the prosecutor's investigation or litigation is terminated.

(c) Each person identified as the perpetrator in a case of substantiated child abuse or neglect shall be advised that:

1. He or she has been identified as a perpetrator of child abuse or neglect;

2. His or her name and social security number are entered into the Central Registry in accordance with N.J.A.C. 10:129A-3.6 below; and

3. He or she may have an opportunity to dispute the findings of a local Division office or institutional abuse investigation unit of the Division in accordance with N.J.A.C. 10:120A.

(d) Except as limited by (a) or (b) above, each person named as the alleged perpetrator in a case where child abuse or neglect was not substantiated shall be advised of the finding.

(e) Except as limited by (a) and (b) above, each person named as the alleged perpetrator in a case where child abuse or neglect was unfounded shall be advised of the finding.

(f) The Division representative shall advise, upon completion of the investigation, the parent or caretaker with physical custody at the time of the incident; the parent with whom the child normally resides; the parent to whom the child will be returned, if the child is in an institution at the time of the incident; and the institutional caretaker or chief administrator of an institution, if the child is in institutional placement:

1. That the investigation has been completed and the finding of the investigation; and

2. Whether further services will be offered or provided to him or her and to his or her family, except in cases involving institutional abuse or neglect.

(g) The Division representative shall advise a child subject of an investigation in a manner determined by the Division representative to be consistent with child's ability to understand and cope with the information, upon completion of the investigation:

1. That the investigation has been completed and the finding of the investigation; and

2. What efforts will be made to protect him or her from further harm and how such protection will occur.

(h) The Division shall provide notice to the referral source that the investigation has been completed.

(i) The Division may advise others, including the non-custodial parent, of investigation findings only as permitted under N.J.S.A. 9:6-8.10a.

10:129A-3.6 Central Registry

(a) The Division shall maintain a Central Registry as established under N.J.S.A. 9:6-8.11 which shall contain at a minimum:

1. The name of each child referred to the Division alleged to have been abused or neglected;

2. The investigation finding; and

3. The name and social security number, if known, of each person confirmed as a perpetrator of subtantiated child abuse or neglect.

(b) The Division shall not expunge any information contained in the Central Registry.

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NOTES

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RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Board of Regulatory Commissioner
Special Hearing Rule; Discovery
Adopted New Rule: N.J.A.C. 1:14-10

Proposed: June 20, 1994 at 26 N.J.R. 2513(a).
Adopted: August 11, 1994 by Jeff S. Masin, Acting Director, Office of Administrative Law.
Filed: August 12, 1994 as R.1994 d.451, **without change**.
Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
Effective Date: September 6, 1994.
Expiration Date: July 15, 1996.

Summary of Public Comments and Agency Responses:
The Office of Administrative Law received two written comments concerning the reproposed new rule.
COMMENT: The Public Utilities Section of the New Jersey Bar Association declined to take a position on the proposal.
COMMENT: William Watkins, an attorney for the New Jersey Industrial Energy Users (NJIEU), expressed concern that the reproposed discovery rule would impose an undue cost burden on the parties to the proceeding, particularly for intervenors who engaged out-of-State witnesses. He believes that the use of depositions in utility rate proceedings rarely saves a significant amount of hearing time or accelerates the hearing process. NJIEU does not seriously object to the use of depositions on notice for witnesses located in New Jersey or where the party requesting the deposition agrees to pay all costs associated with travel to New Jersey, but believes that a showing of good cause to an administrative law judge should be required before a party can be compelled to produce an out-of-State witness at its own cost.
RESPONSE: The Office of Administrative Law continues to believe that the provision of depositions upon notice can result in an acceleration of public utility ratemaking cases. The Uniform Administrative Procedure Rules, which apply to those aspects of public utility cases not specifically covered by the special hearing rules, provide that the party seeking discovery shall pay all reasonable expenses caused by the discovery request. N.J.A.C. 1:1-10.3(a). Therefore, the OAL does not believe the question of additional expenses associated with the use of out-of-State witnesses is a significant factor requiring amendment to the reproposed new rule.

Full text of the adopted new rule follows.

SUBCHAPTER 10. DISCOVERY

1:14-10.1 Depositions
In addition to the discovery methods specified in N.J.A.C. 1:1-10.2(a), depositions upon oral examination or written questions of experts and other designated witnesses whose written testimony has been prefiled in the case shall be available upon written notice by a party in a ratemaking proceeding.

PERSONNEL

(b)

MERIT SYSTEM BOARD

Layoffs
Adopted Amendment: N.J.A.C. 4A:8-2.1

Proposed: June 6, 1994 at 26 N.J.R. 2182(a).
Adopted: August 1, 1994 by the Merit System Board, Linda M. Anselmini, Commissioner, Department of Personnel.
Filed: August 3, 1994 as R.1994 d.441, **without change**.
Authority: N.J.S.A. 11A:2-6(d) and 11A:8-1.
Effective Date: September 6, 1994.
Expiration Date: January 16, 1995.

Summary of Hearing Officer Recommendations and Agency Responses:
A public hearing concerning the proposed amendment was held on June 23, 1994. Henry Maurer served as hearing officer. No comments were received on this proposed amendment at that time and no recommendations were made by the hearing officer. One written comment was received. The record of the public hearing may be reviewed by contacting Janet Share Zatz, Director of Appellate Practices and Labor Relations, Department of Personnel, CN 312, Trenton, New Jersey 08625.

Summary of Public Comments and Agency Responses:
COMMENT: Thomas R. Kearns, President, Public Sector Managers' Association, expressed support for the proposed amendments.
RESPONSE: The Merit System Board appreciates the support for the rule amendment.

Full text of the adoption follows:

4A:8-2.1 Types of layoff rights
(a) A lateral title right means the right of a permanent employee to displace the least senior employee at a selected job location in the layoff unit holding a title determined to be the same or comparable to the affected title of the employee. For a probationary employee, a lateral title right means the right to fill a vacant position or displace a provisional or probationary employee in the same title. Title comparability shall be determined by the Department of Personnel based on the following criteria:
1. The title(s) shall have substantially similar duties and responsibilities and, in State service, the same class code;
2. The education and experience requirements for the title(s) are the same or similar and the mandatory requirements shall not exceed those of the affected title;
3. There shall be no special skills, licenses, certification or registration requirements which are not also mandatory for the affected title; and
4. Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.
(b) A demotional title right means the right of a permanent employee to displace the least senior employee at a selected job location in the layoff unit holding a title determined to be lower than but related to the affected title of the employee. Demotional title rights shall be determined by the Department of Personnel based on the following criteria:
1. The title(s) shall have lower but substantially similar duties and responsibilities and, in State service, where applicable, a lower class code;
2. The education and experience requirements for the title(s) shall be similar and the mandatory requirements shall not exceed those of the affected title;
3. Special skills, licenses, certification or registration requirements shall be similar and not exceed those which are mandatory for the affected title; and
4. Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.
(c)-(e) (No change.)

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COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Increase In Size
Adopted Amendment: N.J.A.C. 5:23-2.5

Proposed: May 16, 1994 at 26 N.J.R. 1910(a).
Adopted: July 12, 1994 by Harriet Derman, Commissioner, Department of Community Affairs.
Filed: July 28, 1994 as R.1994 d.433, **without change**.

Authority: N.J.S.A. 52:27D-124.

Effective Date: September 6, 1994.
Operative Date: January 1, 1995.
Expiration Date: February 3, 1998.

Summary of Public Comments and Agency Responses:
A comment was received from the Eastern Paralyzed Veterans Association (EPVA), a regional chapter of the Paralyzed Veterans of America.

COMMENT: EPVA supports the amendment and believes that it does not diminish the intended effect of the rule. In 1993, changes were made to the BOCA National Building Code in order to "mainstream" certain accessibility requirements, on the grounds that it is less costly to make new construction accessible than to retrofit it later. It follows that these requirements are not intended to apply to the retrofitting of existing buildings, where they would not be cost-effective. The proposed amendment captures the intent of the 1993 BOCA amendments.

RESPONSE: EPVA's support of the amendment is appreciated.

Full text of the adoption follows:

5:23-2.5 Concerning increase in size
(a) If the structure is increased in floor area or height, the entire structure shall be made to conform with the requirements of this chapter in respect to means of egress, fire safety, light and ventilation.
1.-2. (No change.)
3. This requirement shall not apply to existing doors within a dwelling unit.
(b) (No change).
(c) In any event, any new work undertaken in connection with an increase in size shall comply with the requirements of this chapter.

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Backflow Preventers
Adopted Amendments: N.J.A.C. 5:23-2.23 and 4.20

Proposed: May 16, 1994 at 26 N.J.R. 1911(a).
Adopted: July 12, 1994 by Harriet Derman, Commissioner, Department of Community Affairs.
Filed: July 28, 1994 as R.1994 d.434, **without change**.

Authority: N.J.S.A. 52:27D-124.

Effective Date: September 6, 1994.
Operative Date: January 1, 1995.
Expiration Date: February 3, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

5:23-2.23 Certificate of Occupancy requirements
(a)-(h) (No change.)
(i) Equipment listed below, which has been determined by the Department to create a significant potential hazard to public health and safety, shall be granted a certificate of compliance by the construction official based upon the findings of the appropriate subcode official or approved agency for the time period specified. Such equipment shall periodically be reinspected or tested in accordance with the provisions of the regulations, prior to the expiration of a certificate of compliance, and any violations shall be corrected, before a new certificate may be issued. No device shall continue in operation unless a valid certificate of compliance has been reissued.
1.-3. (No change.)
4. Cross-connections and backflow preventers: 12 months.
(j)-(l) (No change.)

5:23-4.20 Departmental fees
(a)-(b) (No change.)
(c) Departmental (enforcing agency) fees shall be as follows:
1. (No change.)
2. The basic construction fee shall be the sum of the parts computed on the basis of the volume or cost of construction, the number of plumbing fixtures and pieces of equipment, the number of electrical fixtures and devices and the number of sprinklers, standpipes, and detectors (smoke and heat) at the unit rates provided herein plus any special fees. The minimum fee for a basic construction permit covering any or all of building, plumbing, electrical, or fire protection work shall be $46.00.
i. (No change.)
ii. Plumbing fixtures and equipment: The fees shall be as follows:
(1) (No change.)
(2) The fee shall be $65.00 per special device for the following: grease traps, oil separators, water-cooled air conditioning units, refrigeration units, utility service connections, back flow preventers equipped with test ports (double check valve assembly, reduced pressure zone and pressure vacuum breaker backflow preventers), steam boilers, hot water boilers (excluding those for domestic water heating), gas piping, active solar systems, sewer pumps, interceptors and fuel oil piping. There shall be no inspection fee charged for gas service entrances.
iii.-iv. (No change.)
3. (No change.)
4. For cross connections and backflow preventers that are subject to testing, requiring reinspection annually, the fee shall be $46.00 for each device when they are tested.
5.-9. (No change.)
(d) (No change.)

(c)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Elevator Inspector HHS Requirements
Adopted Amendment: N.J.A.C. 5:23-5.19

Proposed: May 16, 1994 at 26 N.J.R. 1912(a).
Adopted: July 5, 1994 by Harriet Derman, Commissioner, Department of Community Affairs.
Filed: July 28, 1994 as R.1994 d.435, **with a substantive change** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-124.

Effective Date: September 6, 1994.
Operative Date: January 1, 1995.
Expiration Date: February 3, 1998.

Summary of Public Comments and Agency Responses:
Comments were received from Louis C. Kanicki, Thomas G. La Rosa and William Dombrosky.

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COMMENT: The commenters contend that implementation of the court decision in the *Dombroski v. Primas* case (cited in the proposal as the impetus for this amendment) requires that persons serving as elevator subcode officials on June 30, 1992 be allowed to continue in that capacity, and not be limited to serving as inspectors, which would require that they report to a licensed subcode official as of July 1, 1996. Since many smaller municipalities employ only one person to enforce the elevator safety subcode, allowing persons affected by the court decision to serve as inspectors but not as subcode officials would effectively deny them the right to continue their employment, in contravention of the decision.

RESPONSE: The Department agrees that the interim license must include the authority to function as a subcode official. N.J.A.C. 5:23-5.19(c)2 is therefore being amended to provide for an Elevator Inspector Interim license with a subcode official endorsement.

In order to obtain the Elevator Inspector Interim license, with a subcode official endorsement, the applicant will have to document employment as an elevator inspector on June 30, 1992, complete the Elevator Inspector HHS course, pass the National Certification Test module 6B and, in addition, complete the subcode official course. If the subcode official course has not been completed, a provisional elevator subcode official license may be issued for 24 months, pursuant to N.J.A.C. 5:23-5.8(a)5.

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

5:23-5.19 Elevator inspector H.H.S. requirements

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

(c) On or after *[(the date three months after the effective date of this amendment)]* ***January 1, 1995***, no person shall work either as an elevator inspector or as a subcode official under the provisions of N.J.A.C. 5:23-5.4(g) who does not hold an Elevator Inspector HHS License, an Elevator Inspector Certification or an Elevator Inspector Interim License.

1. An Elevator Inspector Certification shall be issued to those individuals who have documented they were employed as elevator inspectors on June 30, 1992 but have not satisfied the educational and/or examination requirements for the Elevator Inspector HHS license. This certification shall be non-renewable and shall be issued with an expiration date of June 30, 1996.

2. For an Elevator Inspector Interim License, an applicant shall document that he or she was employed as an elevator inspector on June 30, 1992, provide documentation of any additional relevant experience, and satisfy the educational and examination requirements set forth in (b)1 and 2 above. This license shall be renewable, subject to the requirements of N.J.A.C. 5:23-5.21.

i. An Elevator Inspector Interim License with Subcode Official endorsement shall be issued to any applicant for such endorsement who has satisfied the requirements for the Elevator Inspector Interim License; provided that, if the applicant has not successfully completed an approved subcode official educational program, as set forth in N.J.A.C. 5:23-5.20, the endorsement shall be issued on a provisional basis, pursuant to N.J.A.C. 5:23-5.7(a)5, and shall be valid for a period of 24 months only.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Asbestos Hazard Abatement Subcode; Asbestos Safety Technician

Adopted Amendment: N.J.A.C. 5:23-8.10

Proposed: June 6, 1994 at 26 N.J.R. 2183(a).

Adopted: July 12, 1994 by Harriet Derman, Commissioner, Department of Community Affairs.

Filed: July 28, 1994 as R.1994 d.436, **without change**.

Authority: N.J.S.A. 52:27D-124.

Effective Date: September 6, 1994.

Operative Date: January 1, 1995.

Expiration Date: February 3, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

5:23-8.10 Asbestos safety technician

(a) Any candidate for certification as an asbestos safety technician shall submit an application to the Department accompanied by the required application fee established in (c) below. The requirements for certification as an asbestos safety technician are as follows:

1.-3. (No change.)

4. Successful completion of a course for asbestos safety technicians approved by the New Jersey State Department of Community Affairs;

5. Successful passing of an examination for asbestos safety technicians administered by the National Assessment Institute in cooperation with the National Asbestos Council, or any equivalent examination approved by the Department.

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

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Notice of Administrative Change

Uniform Construction Code

Radon Hazard Subcode

New Jersey Municipalities in Tier 1

N.J.A.C. 5:23-10 Appendix 10-A

Take notice that the Department of Environmental Protection has advised the Department of Community Affairs that Asbury Park in Monmouth County was, due to an editorial error, incorrectly reported to them as being in the Tier 1 radon potential classification, when it actually had Tier 3 potential. As a result, the Department of Community Affairs has requested, and OAL has agreed to permit, an administrative change to N.J.A.C. 5:23-10 Appendix 10-A to delete Asbury Park from the list of Tier 1 municipalities. This notice of administrative change is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the changed appendix follows (deletion indicated in brackets [thus]):

APPENDIX 10-A

New Jersey Municipalities in Tier 1

County	Municipality	
. . .		
Monmouth	Allentown	Little Silver
	[Asbury Park]	Marlboro
	Colts Neck	Rumson
	Freehold Borough	Shrewsbury Borough
	Freehold Township	Tinton Falls
	Holmdel	Upper Freehold

. . .

EDUCATION

(c)

STATE BOARD OF EDUCATION

Adult Education Programs

Adopted Amendment: N.J.A.C. 6:30-2.1

Proposed: June 6, 1994 at 26 N.J.R. 2184(a).

Adopted: August 3, 1994 by State Board of Education, Leo Klagholz, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: August 5, 1994 as R.1994 d.443, **without change**.

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Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:7C-1 et seq., 18A:27-2, 18A:48-1, 18A:49-1 through 8, 18A:50-12, 13 and 14, and the Adult Education Act, 20 U.S.C. 1201 et seq.

Effective Date: September 6, 1994.
Expiration Date: June 6, 1999.

Summary of Public Comment and Agency Response:

The New Jersey State Board of Education held a public testimony session on July 20, 1994 at which the above-captioned rule amendment was on the agenda; however, no individuals reserved time to speak.

The Department received written comments from one individual, Alicia Boyko, Director of the Bordentown Community Education/ Recreation Program, during the proposal comment period June 6, 1994 through July 6, 1994. A summary of Ms. Boyko's comment(s) and the Departments response(s) follows:

COMMENT: Ms. Boyko expressed concern that the new paragraph (N.J.A.C. 6:30-2.1(a)8) requires professional and supervisory staff to possess valid New Jersey teaching and supervisory certificates.

Supervisory certificates require additional funding for adult education departments in employing principals to oversee organizational efforts. These efforts presently are the responsibilities of adult coordinators. The coordinators would be eliminated to place principals as your policy states.

This requirement should be "grandfathered" with the present operating structure so that funding can go directly to the program, not to program administration.

RESPONSE: The proposed amendment at N.J.A.C. 6:30-2.1(a)8, which requires all professional staff members to possess valid New Jersey teaching certificates and that such staff be supervised by personnel possessing supervisory certification, is not a new requirement. Pursuant to N.J.A.C. 6:30-2.6(a)6, individuals who currently instruct and/or supervise adult education programs must already possess appropriate New Jersey certification. The certification requirement, due to error, was omitted from the Adult Education Programs readoption proposal published February 22, 1994 at 26 N.J.R. 884(b). The proposed amendment corrects the previous omission error.

The Department notes that the cost of certification is funded by candidate fees not those funds intended for the program.

Full text of the adopted amendment follows:

6:30-2.1 Purpose and program descriptions

(a) Adult basic skills programs shall offer instruction designed to enable students to acquire the skills necessary to function independently as parents, workers, consumers and citizens.

1.-7. (No change from proposal.)

8. All professional staff members shall possess valid New Jersey teaching certificates and shall be supervised and evaluated annually by personnel possessing supervisory certification. This requirement shall not apply to persons providing services as unpaid volunteers.

(a)

STATE BOARD OF EDUCATION

Library Network Services

Readoption with Amendments: N.J.A.C. 6:70

Proposed: June 6, 1994 at 26 N.J.R. 2184(b).
Adopted: August 3, 1994 by State Board of Education, Leo Klagholz, Secretary, State Board of Education and Commissioner, Department of Education.
Filed: August 5, 1994 as R.1994 d.444, **without change.**

Authority: N.J.S.A. 18A:4-14, 18A:74-3.3, 18A:74-6, 18A:74-10 and 18A:74-14.

Effective Date: August 5, 1994, Readoption.
September 6, 1994, Amendment.
Expiration Date: August 5, 1999.

Summary of Public Comments and Agency Responses:

No comments received.

The New Jersey State Board of Education held a public testimony session on June 15, 1994 at which time the above-captioned readoption with amendments was on the agenda; however, no individuals reserved time to speak.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 6:70.

Full text of the adopted amendments follows:

6:70-1.2 Definitions

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

...

"Residents" means persons residing, employed, attending school, or who own property in the library region.

...

6:70-1.3 Designation of library regions

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

(c) Voting members of a regional library cooperative located within the same county may request that the county be transferred to a different library region when a majority of the members in that county vote for such a transfer.

(d) (No change.)

6:70-1.4 Regional library cooperative; formation

(a) Upon approval by the State Librarian of the plan for service and the plan and budget for the first year of operation of the regional library cooperative, the State Librarian shall establish and designate the regional library cooperative.

1. Each duly established and designated regional library cooperative shall be eligible for an initial appropriation to fund the first year of operation of the regional library cooperative, in accordance with a plan and budget submitted to, and approved by the State Librarian.

2. Applicants whose request to be designated as a regional library cooperative has been denied may proceed with the appeals and hearing process described in N.J.A.C. 6:70-1.18.

(b) (No change.)

6:70-1.7 Duties of council of members

(a) The duties of the council of members of the regional library cooperative shall include, but not be limited to, the following:

1.-2. (No change.)

3. Approve the five-year plan and its annual operating program;

4. (No change.)

6:70-1.8 Executive board; organization and duties

(a) The executive board shall be composed of a minimum of nine and a maximum of 15 members to include at least:

1. Five members elected by the council of members of the regional library cooperative: one each from an academic library, an institutional library, a public library, a school library and a special library. If an institutional representative is not available, that position may be filled by an at-large representative;

2.-4. (No change.)

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

6:70-1.11 Regional library cooperative; responsibilities and services

(a) Within one year following establishment and designation as a regional library cooperative and receipt of an initial appropriation, each regional library cooperative shall submit for approval by the State Librarian a five-year plan for regional library cooperative services and annual program and operating budget in support of the plan.

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

(d) In order to provide to every resident of New Jersey full and equal access to the collective library resources of the State, the State Library shall assure that the following services are provided in each region:

1. Information/reference services to supplement those provided by each local library, including interlibrary reference and referral services to residents of the library region;

2. Interlibrary loan/document delivery services on behalf of residents of the library region;

3. Delivery services for library materials including surface and electronic delivery;

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4. Technology initiatives designed to maximize interconnectivity of the State's information resources and those seeking to access them;

5. Technical support services for local library staff to maximize effective use of regional services; and

6. Continuing education for local library staff, particularly in areas that will maximize residents' access to information resources.

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

6:70-1.14 Local library cooperatives

Any group of academic, institutional, public, school, or special libraries or library-related agencies, or any combination thereof, may organize as a nonprofit organization pursuant to the New Jersey Nonprofit Corporation Act, N.J.S.A. 15A:1-1 et seq., and apply for designation to one or more regional library cooperatives as a local library cooperative for the provision of cooperative or reciprocal library services among themselves on behalf of their collective library patrons. The local library cooperative may include members from more than one regional library cooperative and may receive regional or Statewide contracts for services.

6:70-1.16 Library network review board

(a) A library network review board shall be appointed to advise the State Librarian with respect to:

1.-3. (No change.)

4. Necessary or desirable Statewide and inter-regional programs or services;

5.-7. (No change.)

(b) Membership of the library network review board shall be established as follows:

1. Each regional library cooperative shall elect three members from its council of members in accordance with the bylaws adopted by the regional library cooperative; and

2. The State Librarian shall appoint six members, two of which shall represent a library providing a statewide service, including library users.

(c) (No change.)

6:70-1.17 Allocation of library network funds

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

(c) Each year the State Librarian shall determine the amount required to provide base funds to each regional library cooperative according to the following formula:

1. Ten percent of the amount allocated shall be distributed equally among the regional library cooperatives;

2. Eighty percent of the amount allocated shall be distributed among the regional library cooperatives based on the population of the region as shown by the latest Federal census effective in New Jersey; provided that upon application by a municipality or county to the Commissioner of Education, any special census of population taken by the United States Census Bureau subsequent to its latest effective census shall determine such number of inhabitants;

3. (No change.)

(d)-(e) (No change.)

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF PUBLICLY FUNDED SITE REMEDIATION

New Jersey Pollutant Discharge Elimination System

Adopted Amendments: N.J.A.C. 7:14A-6.14 and 22.4
Adopted New Rules: N.J.A.C. 7:14A-2.15 and 6.17

Proposed: January 3, 1994 at 26 N.J.R. 158(a).

Adopted: July 28, 1994 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Filed: August 10, 1994 as R.1994 d.448, **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. 58:10A-1 et seq.

DEPE Docket Number: 64-93-12/113.

Effective Date: September 6, 1994.

Expiration Date: June 2, 1995.

Summary of Hearing Officer Recommendations and Agency Responses:

On January 3, 1994, the Department of Environmental Protection and Energy (Department) proposed amendments at N.J.A.C. 7:14A-6.14 and 12.4, and new rules at N.J.A.C. 7:14A-2.15 and 6.17. The Department held a public hearing concerning the new rules and amendments on January 21, 1994 in Trenton, New Jersey. The Department accepted written comments until February 2, 1994.

Arnold Schiffman, Assistant Director in the Division of Publicly Funded Site Remediation, served as hearing officer for the NJPDES rule proposal at the January 21, 1994 public hearing. Assistant Director Schiffman recommended that the Department adopt the new rules and amendments with the changes described in the response to the specific comments as stated in the Summary of Public Comments and Agency Responses below. The Department agrees with the recommendation.

Interested persons may inspect the public hearing record, or obtain a copy upon payment of the Department's normal copying charges, by contacting:

Janis Hoagland
Office of Legal Affairs
Department of Environmental Protection
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

Summary of Public Comments and Agency Responses:

The Department received written or oral comments from the six commenters listed below during the public comment period.

1. Fred Anderson, Exxon Company
2. Vincent Bennett, Schering-Plough Corporation
3. Philip Brilliant, Environmental Evaluation Group
4. Kevin Deeny, Junkins Engineering
5. Wayne Defeo, Browning-Ferris Industries
6. Steven Singer, Schwartz, Tobia & Stanziale

A summary of the comments timely submitted and the Department's responses follows. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

General

1. COMMENT: The commenter expressed general support of the Department's proposed amendments. (1)

2. COMMENT: The commenter commended the Department's intent to make the New Jersey Pollutant Discharge Elimination System more user-friendly and beneficial to the environment by proposing these new rules and amendments. The proposed changes will reduce paperwork and lessen administrative costs of the NJPDES program, while promoting more expedient remediation of contaminated sites by responsible parties. (3)

3. COMMENT: The commenter expressed strong support of the Department's efforts to preserve groundwater quality in New Jersey. The proposed new rules and amendments move toward striking an appropriate balance between the need for comprehensive standards and the role of other environmental permitting and standards-setting programs. The Department should be congratulated for proposing that certain contaminated sites be exempted from NJPDES-DGW permitting requirements. (5)

RESPONSE: The Department appreciates the commenters' recognition of the effort made to reduce administrative and financial burdens for parties investigating and remediating contaminated sites. The Department anticipates that these regulations will streamline and simplify the process by which Department approvals are given for certain aspects of groundwater investigations and remediations.

N.J.A.C. 7:14A-2.15

4. COMMENT: The Department should extend the period of time granted by the proposed permit-by-rule in N.J.A.C. 7:14A-2.15(a)1 beyond 90 days for any pilot activities that involve biological systems. EPA guidance suggests a six month period for sufficient data collection and evaluation of all the factors relating to biological treatment of contaminated ground water. Some of the biotreatment techniques that the commenter has investigated in the past have taken longer than the

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90 day period allowed by the proposed rule since the studies typically are conducted on-site using site ground waters, and the microorganisms must be acclimated and subjected to a variety of different operating circumstances in order to establish a design basis for the longer-term, permitted remediation. (4)

RESPONSE: The Department agrees that 90 days may be insufficient to conduct pilot studies designed to evaluate the susceptibility of groundwater pollutants to microbial degradation under site-specific conditions. The general applicability of a proposed bioremedial technique and its potential for success under given site conditions are often predicted based on a conceptual understanding of such factors as contaminant type, physical and chemical properties, and concentrations; site hydrogeologic characteristics; presence or absence of microbial activity; and design and monitoring of the proposed treatment system. However, the long-term effectiveness of the selected treatment method in a particular environment generally can be established only after manipulation of one or more factors influencing biological activity, including oxygen, nutrients, and pH. As noted by the commenter, microorganisms need time to become acclimated to adjustments (for example, the addition of nutrients) in their environment, and technical experience has demonstrated that sometimes several adjustments are required before optimal operating conditions can be identified for the longer-term, permitted bioremediation. Additionally, limited field data has shown the half-lives of commonly biodegradable groundwater pollutants (benzene, toluene, ethylbenzene, and xylenes) to be in the range of 180 days. The Department has therefore modified N.J.A.C. 7:14A-2.15(a)1 on adoption to allow up to 180 days for discharges from pilot treatment studies involving bioremediation.

5. COMMENT: Proposed N.J.A.C. 7:14A-2.15(a)4 exempts discharges to ground water from leaking residential underground storage tanks from NJPDES permit requirements, recognizing that homeowners are unprepared to deal with the economic and technical aspects of the NJPDES permit process. However, there are numerous cases throughout the State involving leaks from residential aboveground storage tanks which present the same concerns. The Department should modify the proposed new rule to include a similar provision for discharges from residential aboveground fuel storage tanks. (6)

RESPONSE: The Department agrees that discharges of petroleum products from residential aboveground tanks present the same concerns as discharges from underground storage tanks and that similar remedial measures must be employed in order to mitigate the effects of such discharges. The rationale for the permit-by-rule authorization proposed under N.J.A.C. 7:14A-2.15(a)4 for discharges associated with groundwater remediation resulting from leaking residential underground storage tanks applies as well for aboveground storage tanks and other spills of heating oil at residential buildings. The most common example of discharges of petroleum products that do not occur from tanks is when heating oil is delivered to a residence where an oil tank has been removed from service, and the oil is discharged directly to the basement or crawl space because the fill pipe was never sealed.

The Department has amended N.J.A.C. 7:14A-2.15(a)4 on adoption to provide for permit-by-rule authorization for discharges to ground water resulting from remediation of any discharges of heating oil at residential buildings for four units or less, including aboveground tanks. The Department intends that permit-by-rule authorizations under N.J.A.C. 7:14A-2.15(a)4 be limited to homeowner cases and is therefore restricting these authorizations to remedial discharges associated with spills or leaks of heating oil at residential buildings of four units or less. As stated in the Summary of the proposal, the Department is relieving homeowners who conduct remediation with Department oversight from the additional administrative and economic burdens of applying for and receiving full NJPDES-Discharge to Ground Water permits because the Department recognizes the personal and financial hardship experienced by homeowners in their good-faith efforts to comply with the Department's remediation requirements.

The Department is also defining "heating oil" in N.J.A.C. 7:14A-2.15(a)4. The definition of "heating oil" is intended to parallel the definition applicable to underground storage tanks at N.J.A.C. 7:14B-1.6, as that definition is consistent with the purpose and rationale of this rule.

N.J.A.C. 7:14A-6.14

6. COMMENT: The Department should revoke existing permits that will be subject to the exemption proposed under N.J.A.C. 7:14A-6.14(b) in chronological order, beginning with the oldest permits first. (1)

RESPONSE: The Department is currently considering various options for the process of revoking, or modifying portions of, existing permits that are subject to the exemptions proposed under N.J.A.C. 7:14A-6.14(b). The Department intends to implement a system of permit revocation and modification that will be efficient, expedient, and cost-effective. One favored option presently under consideration involves the revocation/modification of affected permits by discharge category, probably within defined demographic areas (municipalities or counties). Modification or revocation of permits using this approach would be performed irrespective of the date on which each permit was issued. This approach would enable the Department to issue one public notice for multiple proposed permit actions within a given area, and would significantly reduce time and costs typically associated with individual public notices, responses to comments, and finalization of the permit actions. The Department expects to begin modification and revocation of permits falling within the scope of the proposed exemptions following adoption of N.J.A.C. 7:14A-6.14(b) and will decide upon the best method for effecting these modifications and terminations at that time.

7. COMMENT: It is important that the requirements for protection of ground water, which are designed to apply to a number of different activities that may impact groundwater quality, not duplicate or contradict other water quality regulations that are applicable to specific types of facilities. The Department should expand the scope of the exemptions proposed at N.J.A.C. 7:14A-6.14(b) to include operating municipal solid waste landfills and municipal solid waste landfills whose closure and post-closure care requirements are established pursuant to 40 C.F.R. Part 258 (RCRA "Subtitle D regulations"). The Part 258 rules, which became effective on October 9, 1993, require the installation of a system of monitoring wells and implementation of a comprehensive groundwater monitoring and response program at all municipal solid waste landfills subject to the federal Subtitle D regulations. The imposition of NJPDES permit requirements on these facilities will result in unnecessary duplication of effort and delays in processing applications for these facilities. Given the comprehensive nature of the groundwater monitoring requirements under the Federal Subtitle D regulations, municipal solid waste landfills subject to the Part 258 rules should be exempted from any NJPDES permitting requirements. As part of its comments, the commenter summarized Subparts E through G of the U.S. Environmental Protection Agency's rules. (5)

RESPONSE: The Department appreciates the commenter's concern that the imposition of NJPDES-Discharge to Ground Water permitting requirements on municipal solid waste landfills already regulated under the Federal Subtitle D requirements potentially may result in duplication of effort and delays in permit processing. However, the Department is not able to exempt municipal solid waste landfills subject to regulation under 40 C.F.R. Part 258 from NJPDES-Discharge to Ground Water permitting requirements at this time for the following reasons:

Owners and operators of contaminated sites are exempt under the new rule at N.J.A.C. 7:14A-6.14 from conducting ground water detection monitoring, compliance monitoring, or corrective action under NJPDES-Discharge to Ground Water permits because the Department has revised its overall strategy for management of these sites. As stated in the Summary of the proposal (26 N.J.R. 158), the Department will no longer use NJPDES-Discharge to Ground Water permits to approve or oversee groundwater investigation and remediation at contaminated sites that are under the purview of the Site Remediation Program. Pursuant to the recently adopted regulations for Department Oversight of the Remediation of Contaminated Sites, N.J.A.C. 7:26C, remediation of contaminated sites will be performed under administrative consent orders, memoranda of agreement, and regulatory requirements of the Industrial Site Recovery Act and the Underground Storage of Hazardous Substances Act. The Site Remediation Program will continue to issue NJPDES-Discharge to Ground Water permits only for those aspects of groundwater remediation involving the reinjection into ground water of treated water.

Operating municipal sanitary landfills are not subject to the permitting exemptions at N.J.A.C. 7:14A-6.14(b) because N.J.A.C. 7:14A-10.12 requires owners and operators of these landfills to implement groundwater monitoring programs to detect and measure contamination from landfill leachate, and the only oversight mechanism currently in place under which groundwater monitoring requirements applicable to operational units are established and enforced is the NJPDES-Discharge to Groundwater permit. Similarly, non-operational landfills subject to the closure and post-closure care requirements in N.J.A.C. 7:26-2A.9 are required to include, as part of a closure and post-closure plan, a proposal for groundwater monitoring in accordance with the NJPDES rules at

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N.J.A.C. 7:14A. Since, at present, no oversight mechanism other than the NJPDES-Discharge to Ground Water permit has been established under which non-operational landfills can submit monitoring data for review and evaluation, these units cannot be included under the exemptions at N.J.A.C. 7:14A-6.14(b).

The commenter's comments have been forwarded to the Divisions of Water Quality and Solid Waste Management in the Department for their consideration. These Divisions are responsible for the establishment and implementation of programs relating to solid waste landfills regulated under the State's Solid Waste Management Act. Owner and operators of municipal solid waste landfills and non-operational landfills subject to the closure and post-closure care requirements in N.J.A.C. 7:26-2A.9 will be required to comply with the NJPDES-Discharge to Ground Water permitting requirements until such time that the Department may establish alternative mechanisms to replace the function of the NJPDES-Discharge to Ground Water permit in regulating groundwater monitoring programs at these facilities.

8. COMMENT: Not all regulated parties appear to be treated equally under proposed N.J.A.C. 7:14A-6.14(a)4, (b) and (c). Only persons conducting groundwater monitoring and investigation, and persons performing groundwater remediation not involving discharges of treated ground water, would benefit from the proposed new rules. The provisions of N.J.A.C. 7:14A-6.14(a)4, (b) and (c) will result in non-equitable remediation costs since they are not retroactive to facilities which have already been required to obtain a NJPDES-DGW permit. Since annual NJPDES-DGW permit fees can be substantial, the attendant costs of performing similar types of remediation may be significantly different. The provisions of the proposed rules should be made retroactive to all applicable participants in the NJPDES programs. (2)

RESPONSE: It is unclear whether the commenter believes other groups performing site remediation activities should be exempt from the requirement of a permit, and if so, which groups; or whether the comment reflects a perception that those who now have NJPDES-Discharge to Ground Water permits for site remediation activities will pay higher oversight costs because they have permits predating this amendment. The Department responds to both interpretations of the comment.

The Department carefully considered which site remediation activities could be exempted from the requirement of a NJPDES-Discharge to Ground Water permit. The Department has limited authority to exempt a discharge from the requirement of a permit under the Water Pollution Control Act, N.J.S.A. 58:10A-6(d). The exemptions proposed by the Department are circumscribed by the statute, and by other considerations set forth in detail in the Summary of the proposal. A person conducting a remediation must still obtain a permit for a discharge from a point source to ground water or surface water. In the Department's view, a permit is the best way to ensure that ground water standards or site-specific cleanup criteria are being achieved, or, in the case of a surface water discharge, that effluent limitations are being met. Moreover, the Water Pollution Control Act does not authorize the Department to exempt most surface water discharges.

Persons conducting remediations who are discharging treated water back to ground or surface water will have a permit only for the discharge, rather than for all investigative and corrective action functions, as was required before this amendment.

While the exemptions do not apply retroactively, existing permits issued before adoption of this amendment will be terminated or modified consistent with the exemptions.

Cost differentials were eliminated beginning in fiscal year 1994 (July 1, 1993 through June 30, 1994) by a change in the NJPDES Discharge to Ground Water fee rule at N.J.A.C. 7:14A-1.8. The permit fee is calculated, consistent with other site remediation oversight fees, based on the actual costs of the time spent by the Department in adminstering the permit. A person conducting a remediation is charged once for each task that the Department performs, whether the task is reviewing data submitted under a permit or reviewing a remedial action work plan under a memorandum of agreement.

Where a NJPDES-Discharge to Ground Water permit is still required, the fee is the same as if the work is being done under another type of oversight document. As of July 1, 1993, NJPDES-Discharge to Ground Water permit fees will reflect actual time spent on such activities as writing new permits, modifying existing permits, or reviewing data submitted under the permits, rather than the formula previously used to calculate fees for these permits.

The Department agrees with the commenter that not all site remediation activities are exempt from the requirements of a NJPDES-Discharge to Ground Water permit. However, the Department believes that some activities cannot or should not be exempted for the reasons described in the Summary of the proposal. Moreover, perceived cost inequities should be addressed by the change in the fee rule and by the modification or termination of existing permits consistent with this rule.

N.J.A.C. 7:14A-12.4(a)4 (recodified to 7:14A-22.4(b)5)

9. COMMENT: Activities subject to a general permit should be exempted from the requirement to obtain a Treatment Works Approval (TWA), in the same way as are discharge to ground water activities authorized under the permit-by-rule. Although the Summary of the proposal states that persons who receive general permits are not required to apply for and receive separate TWAs because N.J.A.C. 7:14A-7.2(a)1 specifies that a NJPDES permit serves as the construction approval, many NJPDES permit writers have in the past required submittal of TWAs. The following language should be added to the rule as N.J.A.C. 7:14A-12.4(a)5: "Building, installing, modifying, or operating any system for discharges to groundwater that are authorized by a general permit in accordance with N.J.A.C. 7:14A-6.17." (3)

RESPONSE: The Department disagrees with the commenter's suggestion that all activities authorized under the groundwater general permit program should be exempted from TWA requirements. The Department believes that, in some circumstances, the level of detailed review and evaluation of a proposed treatment system that is afforded by the TWA process may be necessary to ensure that the proposed discharge can meet established groundwater effluent limits before general permit authorization is given. As explained in more detail below, the existing rule specifies that a final draft NJPDES permit can serve as a construction approval, but also allows the Department the discretion to require a TWA in some circumstances.

N.J.A.C. 7:14A-7.2(a)1 specifies that a final draft NJPDES permit serves as the construction approval for any pollutant collection or treatment facility, unless the Department specifically requires that application for a treatment works approval be made in accordance with N.J.A.C. 7:14A-12 (recodified to N.J.A.C. 7:14A-22 when the Department adopted major revisions to the TWA rules, published on June 6, 1994; see 26 N.J.R. 2413(b)). Under N.J.A.C. 7:14A-22.2(h), the Department determines whether a discharger must apply for a TWA within 20 working days of the issuance of a final NJPDES permit or NJPDES permit modification. The criteria established by the Department in determining whether a separate TWA is required are outlined under N.J.A.C. 7:14A-22.3 and 22.4. Therefore, although a draft NJPDES permit can serve as a construction approval, the Department requires TWAs for many systems designed to discharge to ground water to ensure that these systems, which generally are designed based on criteria specific to the site or discharge, will be constructed, operated, and maintained in a manner that is protective of human health and the environment. For example, the design of a community subsurface disposal system must take into account such criteria as site soil type and characteristics, depth to the water table, projected wastewater flow, and proposed level of treatment. Since each design is dependent on factors unique to each site, the Department carefully reviews the proposed plans through the TWA application process to determine whether the proposed designs will ensure successful collection, treatment, and discharge of treated wastewater. In such cases, the general permit would not adequately serve as the construction approval because each system's design can vary greatly and must be individually evaluated.

Since the activities that are subject to a general permit may involve more complex system design, operation, and maintenance than activities that will be authorized under the permit-by-rule, the Department will retain its discretion to require a TWA in circumstances where a more detailed review and evaluation of the proposed system is warranted.

Summary of Agency-Initiated Changes:

1. The Department has modified the heading of N.J.A.C. 7:14A-2.15 to delete the phrase "monitoring, remedial investigation or remedial alternatives analysis" and replace it with the phrase "remediation of contaminated sites." The Department is preparing to propose amendments to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, which will eliminate the term "remedial alternative analysis." The term "remediation" is being added to the heading as it will be defined in the amendments to N.J.A.C. 7:26E to include all necessary actions to investigate and clean up any known or suspected discharges or threatened discharges of contaminants.

2. The Department has corrected a typographical error in the text of the published rule proposal at N.J.A.C. 7:14A-2.15(a). The statutory

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citation for the Spill Compensation Control Act was incorrectly published as N.J.S.A. 58:12-3.11 and has been corrected to read N.J.S.A. 58:10-23.11.

3. The Department has modified the citiation N.J.A.C. 7:14A-12.4(a)4 to N.J.A.C. 7:14A-22.4(b)5 to conform with the recent recodification of the TWA rules from N.J.A.C. 7:14A-12 to N.J.A.C. 7:14A-22.

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

7:14A-2.15 Permit-by-rule authorization for ground water discharges necessary for *[contaminated site monitoring, remedial investigation or remedial alternatives analysis]* ***remediation of contaminated sites***

(a) When the Department is remediating a contaminated site as defined at N.J.A.C. 7:26C-1.3, or an owner or operator of a contaminated site is conducting remediation under Department oversight pursuant to the rules at N.J.A.C. 7:14B implementing the Underground Storage of Hazardous Substances Act, the requirements of the Industrial Site Recovery Act (N.J.S.A. 13:1K-6 et seq., as amended), the requirements of the Spill Compensation and Control Act (N.J.S.A. *[58:12-3.11]* ***58:10-23.11***), or the Procedures for Department Oversight of the Remediation of Contaminated Sites at N.J.A.C. 7:26C, and is in receipt of a notification of authorization by the Department as specified in (b) below, the following ground water discharges are authorized by permit-by-rule:

1. Discharges from pilot treatment plants for the purpose of obtaining engineering design data where the discharge will not last more than 90 days from the first date of discharge***, except for discharges related to in site biotreatability studies where the discharge will not last more than 180 days from the first date of discharge***;

2. Discharges from wells to test aquifers for the purpose of measuring aquifer characteristics where the discharge will not last more than 30 days from the first date of discharge;

3. Discharges from any other facility or equipment for monitoring, engineering, remedial alternatives analysis, or design studies necessary to evaluate a contaminated site where the discharge will not last more than 90 days from the first date of discharge; and

4. Discharges to ground water to remediate contamination *[caused by leaking underground storage tanks at private residences not subject to the provisions of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq.]* ***resulting from any discharge of heating oil at a residential building of four units or less. "Heating oil" means any grade of petroleum product including, but not limited to, No. 1, 2, 4 (light and heavy), 5 (light and heavy), and 6 fuel oils, diesel and kerosene of any grade or type used to heat residential buildings.***

(b) The permit-by-rule is effective upon receipt of written notification from the Department. This notification will include any limitations necessary to ensure compliance with applicable ground water quality, surface water quality or cleanup requirements.

7:14A-6.14 Exemptions

(a) The following discharges do not require a DGW permit:

1. (No change.)

2. Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands but not discharges from concentrated animal feeding operations as defined in N.J.A.C. 7:14A-3.4, discharges from concentrated aquatic animal production facilities as defined in N.J.A.C. 7:14A-3.5, discharges to aquaculture projects as defined in N.J.A.C. 7:14A-3.6, and discharges from silvicultural point sources as defined in N.J.A.C. 7:14A-3.7;

3. Return flows from irrigated agriculture; and

4. Any discharge not exceeding 60 days and in compliance with the instructions of a Department on-scene coordinator or remedial project manager pursuant to 40 CFR 300 (the National Oil and Hazardous Substances Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances), and the State Spill Compensation and Control Act, N.J.S.A. 58:10-23.11.

(b) Except as specified in (c) below, an owner or operator is exempted from the requirement of obtaining a DGW permit for discharges from contaminated sites as defined at N.J.A.C. 7:26C-1.3 when the owner or operator is conducting the following programs required by N.J.A.C. 7:14A-6.15(b):

1. Detection monitoring performed pursuant to N.J.A.C. 7:14A-6.15(i);

2. Compliance monitoring performed pursuant to N.J.A.C. 7:14A-6.15(j); or

3. Corrective action performed pursuant to N.J.A.C. 7:14A-6.15(k).

(c) The exemption in (b) above does not apply to any of the following:

1. Hazardous waste land disposal units and operational hazardous waste underground storage tanks;

2. Site operational activities or discharges;

3. Discharges resulting from the extraction and treatment of ground water;

4. Non-operational landfills subject to the provisions of N.J.A.C. 7:26-2A.9; and

5. Facilities where monitoring or remediation under a NJPDES-DGW permit was required as a condition of approval issued pursuant to the Industrial Site Recovery Act or by an oversight document including, but not limited to, an Administrative Consent Order or an Administrative Order.

7:14A-6.17 General permits

(a) The Department may issue a general permit in accordance with the following:

1. The general permit shall be written to cover a category of discharges described in the permit under (a)2 below, except those otherwise eligible for authorization under the permit but authorized by individual permits or other general permits, within a geographic area. The area shall correspond to existing geographic, geologic or political boundaries, such as:

i. Designated planning areas under Section 5 of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.;

ii. City, county or state political boundaries; or

iii. Aquifer units or formations; or

iv. Any other appropriate division or combination of boundaries.

2. The general permit shall be written to regulate, within the area described in (a)1 above, categories of point-source discharges to ground water if the Department determines that the discharges all:

i. Involve the same or substantially similar types of treatment;

ii. Involve the same type or substantially similar types of pollutants;

iii. Require the same effluent limitations or operating conditions;

iv. Require the same or similar monitoring; and

v. In the opinion of the Department, are more appropriately controlled under a general permit than under individual permits.

(b) The administration of general permits shall be as follows:

1. The Department may issue, modify, revoke and reissue, or terminate general permits in accordance with applicable requirements of N.J.A.C. 7:14A-2, 7 and 8.

2. The following pertain to authorization to discharge:

i. Except as provided in (b)2vii below, persons seeking authorization under a general permit shall submit to the Department a written request for authorization. A person who fails to submit a request for authorization in accordance with the terms of the permit is not authorized to discharge under the terms of the general permit unless the general permit, in accordance with (b)2vi below, contains a provision that a request for authorization is not required, or the Department notifies a person that it is authorized by a general permit in accordance with (b)2vii below.

ii. The contents of the request for authorization shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including, at a minimum, the legal name and address of the owner and operator, the facility name and address, type of facility or discharges, and the certification required under (b)2iii below. Unless the general permit specifies otherwise, the request for authorization shall include all of the forms, information, and certification that this chapter (includ-

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ing, but not limited to, N.J.A.C. 7:14A-2.1) requires to be submitted in an application for a DGW permit. The request for authorization shall also include any other certification specified in the general permit. The general permit shall not specify signature requirements less stringent than those applicable to permit applications under N.J.A.C. 7:14A-2.4.

iii. In addition to other information required under (b)2ii above, the request for authorization shall include a certification that arrangements have been made for publication, in a daily or weekly newspaper within the area affected by the facility, of a notice which states that a request for authorization under a general permit to discharge pollutants to ground water has been submitted pursuant to N.J.A.C. 7:14A-6.17(b)2. This notice shall also identify the general permit under which authorization is sought, the legal name and address of the owner and operator, the facility name and address, and type of facility or discharges. Each general permit shall set forth the form of notice appropriate to that general permit.

iv. General permits shall specify the deadlines for submitting requests for authorization and the date(s) when a person is authorized to discharge under the permit.

v. General permits shall specify whether a person who has submitted a complete and timely request for authorization in accordance with the general permit, and who is eligible for authorization under the permit, is authorized to discharge in accordance with the permit either upon receipt of the request for authorization by the Department, after a waiting period specified in the general permit, on a date specified in the general permit, or upon the person's receipt of notification of authorization by the Department. Authorization may be terminated, revoked, or denied in accordance with (b)4 through (b)6 below. The Department shall publish in the DEPE Bulletin or other similar DEPE publication a quarterly report of each authorization issued under a general permit.

vi. Discharge to ground water may, at the discretion of the Department, be authorized under a general permit without submission of a request for authorization where the Department finds that a request for authorization requirement would be inappropriate. In making such a finding, the Department shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges authorized by the permit; and the estimated number of discharges to be authorized by the permit. The Department shall provide in the public notice of the general permit the reasons for not requiring a request for authorization.

vii. The Department may notify a person that he or she is authorized by a general permit, even if the person has not submitted a request for authorization. A person so notified may nonetheless request an individual permit under (b)3iii below.

3. The following pertain to requiring an individual permit or another general permit:

i. The Department may require any permittee authorized by a general permit to apply for and obtain an individual DGW permit or seek and obtain authorization under another general permit. Any interested person may, in accordance with the procedure set forth at (b)5 below, petition the Department to take action under this subparagraph. Cases where an individual DGW permit or another general permit may be required to include the following:

(1) There is evidence that the discharge(s) may be a significant contributor of pollutants. In making this determination, the Department may consider the location of the discharge with respect to waters of the State, the volume of the discharge, the quantity and nature of pollutants in the discharge, aquifer classification and designated uses, and other relevant factors;

(2) The permittee is not in compliance with the conditions of the general DGW permit;

(3) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the discharge;

(4) Circumstances have changed since the time of authorization or the request to be authorized so that the permittee is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.

(5) A Water Quality Management Plan containing requirements applicable to such point source discharges is approved; and/or

(6) The Department acquires new information indicating that the person otherwise is not eligible for the general permit according to its own terms.

ii. The Department may require any permittee authorized by a general permit to apply for an individual DGW permit as provided in (b)3i above, only if that permittee has been notified of this requirement in writing.

(1) This notice shall include a brief statement of the reason for this decision, an application form or, if applicable, a request for authorization form, a statement setting a time for the permittee to file the application or, if applicable, the request for authorization, and a statement that on the effective date of the individual DGW permit or on the date of the permittee's authorization under another general permit, the individual permittee's authorization under the general permit shall automatically terminate. The Department may grant additional time upon request of the permittee. If a permittee fails to submit in a timely manner an application form or request for authorization form required by the Department under this subparagraph, then that permittee's authorization under the general permit is automatically terminated at the end of the day specified for submitting the application form or request for authorization form.

iii. Any permittee authorized by a general permit may request to be excluded from authorization under the general permit by applying for an individual DGW permit. The permittee shall submit an application under N.J.A.C. 7:14A-2.1, with reasons supporting the request, to the Department no later than 90 days after the publication by the Department of the general permit in the DEPE bulletin. The request shall be processed under N.J.A.C. 7:14A-2, 7 and 8 of this chapter. The request shall be granted by the issuing of any individual permit if the reasons cited by the permittee are adequate to support the request.

iv. When a permittee authorized by a general DGW permit is issued an individual DGW permit for the authorized discharge, or obtains authorization for that discharge under another general permit, the permittee's authorization under the general permit is automatically terminated on the effective date of the individual permit or on the date of the permittee's authorization under another general permit, whichever the case may be. When an individual DGW permit is denied to a permittee authorized by a general permit, or the permittee is denied authorization under another general permit, the permittee's authorization under the general permit is automatically terminated on the date of such denial, unless otherwise specified by the Department.

v. If a permittee's discharge is excluded from a general permit solely because that discharge already is authorized by an individual permit or authorization under another general permit, the permittee may request that the individual permit or authorization be revoked or modified, as appropriate, and that the discharge be authorized by a general permit. The permittee shall submit a request for revocation or modification under N.J.A.C. 7:14A-7.5 and any request for authorization required under N.J.A.C. 7:14A-6.17, with reasons supporting the request, to the Department. In reviewing such requests, the Department may consider the location of the discharge with respect to waters of the State; the volume of the discharge; the quantity and nature of pollutants in the discharge; the aquifer classification and its designated uses; and any other factors the Department considers relevant to determining whether the discharge is best regulated under one permit or the other. If the Department revokes or modifies the individual permit or authorization, and if authorization under a general permit is issued, the permittee shall be authorized under the general permit.

4. The Department may terminate a permittee's authorization under a general permit for causes specified in N.J.A.C. 7:14A-2.13(a). Such termination of authorization is a type of permit termination under N.J.A.C. 7:14A-2.13. A requirement pursuant to (b)3 above that a permittee apply for an individual permit or seek

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authorization under another general permit is not a termination within the meaning of N.J.A.C. 7:14A-2.13, even if the permittee's authorization is eventually terminated in favor of an individual permit or another general permit, or is automatically terminated under (b)3ii(1) above as a result of the permittee's failure to submit in a timely manner an application form or request for authorization form. If the Department directs the permittee to apply for an individual permit or seek authorization under another general permit, the only procedure available to the permittee is to ask the Department to reconsider its decision by sending a letter to the Commissioner within 30 days of the issuance of the initial decision. The letter shall be sent to the Department's Office of Legal Affairs, and both the envelope and the letter shall clearly indicate that it is a "REQUEST FOR RECONSIDERATION OF THE GENERAL PERMIT DETERMINATION." The Commissioner may act on the request within 60 days; if the Commissioner fails to take any action the request shall be deemed denied. In no event shall an order from the Department directing a permittee to apply for an individual permit or seek authorization under another general permit (or a denial of a request to reconsider that order) be deemed final agency action.

5. Procedures regarding petitions brought under (b)3i above are as follows:

i. The petition shall state clearly and concisely:

(1) The name, address, and telephone number of the petitioner;

(2) The petitioner's interest in the petition (including any organizational affiliations and any economic interest);

(3) The name and address of the permittee whose authorization could be affected by the petition;

(4) The number of the permit under which that permittee is authorized; and

(5) The reasons why the petition should be granted (including any citations to any relevant legal authority).

ii. The petitioner shall serve the petition on both the Department and the permittees whose authorization could be affected by the petition.

iii. The permittees whose authorization could be affected shall have 30 days from the date the petition was served to respond to the petition. Any response shall be served on both the Department and the petitioner. The Department thereafter may, in its discretion, seek further information relevant to the petition.

iv. The Department shall determine whether to grant the petition based upon materials submitted in accordance with this paragraph and based upon the criteria set forth in (b)3i above. The Department shall notify both the petitioner and the permittees whose authorization is affected by the petition of the Department's determination.

v. Either party may ask the Department to reconsider its decision regarding a petition by sending a letter to the Commissioner within 30 days of the issuance of the initial decision. The letter shall be sent to the Department's Office of Legal Affairs, and both the envelope and the letter shall clearly indicate that it is a "REQUEST FOR RECONSIDERATION OF PETITION DETERMINATION." The Commissioner may act on the request within 60 days; if the Commissioner fails to take any action the request shall be deemed denied. Only if the ultimate outcome of the agency proceedings is that the petition is denied by the Commissioner shall there be final agency action.

6. The Department shall deny a request for authorization if it determines that the subject discharge is not eligible for the general permit for which the person has requested authorization, and the Department may deny a request for authorization if it determines that the discharge is not appropriately regulated under the relevant general permit because of its location with respect to surface water bodies, the volume of the discharge, the quantity and nature of pollutants in the discharge, the aquifer classification and designated uses, or other relevant factors. If the Department denies a request for authorization, it shall notify the person of that denial in writing. The only procedure for challenging the denial that is available to a person whose request for authorization has been denied is to ask the Department to reconsider its decision by sending a letter to the Commissioner within 30 days of the issuance of the initial denial. The letter shall be sent to the Department's Office of Legal Affairs, and both the envelope and the letter shall clearly indicate that it is a "REQUEST FOR RECONSIDERATION OF GENERAL PERMIT DETERMINATION." The Commissioner may act on the request within 60 days; if the Commissioner fails to take any action, the request shall be deemed denied. In no event shall a denial of a request for authorization, or a request to reconsider that denial, be deemed final agency action.

7:14A-22.4 Activities for which a treatment works approval is not required

(a) (No change.)

(b) In addition to (a) above, a treatment works approval or general industrial treatment works approval will not be required for the following facilities:

1.-2. (No change.)

3. Building, installing, operating or modifying any of the following activities or facilities:

i.-vi. (No change.)

vii. Treatment units used for pretreatment of water for use in an on-going manufacturing process at the industrial facility; *[or]*

4. Mobile treatment works to be specifically utilized for the treatment of water in relation to a short-term pump test or dewatering associated with an underground storage tank project authorized under a NJPDES category B4B General permit*[.]**; or***

*[4.]***5.*** Building, installing, modifying, or operating any system for discharges to ground water that are authorized by permit-by-rule in accordance with N.J.A.C. 7:14A-2.15.

(c)-(e) (No change.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Bureau of Shellfisheries

Oyster Management

Adopted Amendments: N.J.A.C. 7:25A-1.2, 1.9 and 4.3

Proposed: April 18, 1994 at 26 N.J.R. 1562(a).

Adopted: July 20, 1994 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Filed: August 10, 1994 as R.1994 d.450, **without change, but with the proposed amendment to N.J.A.C. 7:25A-1.4 not adopted.**

Authority: N.J.S.A. 50:1-5 and 50:3-8.

DEPE Docket Number: 20-94-03/349.

Effective Date: September 6, 1994.

Expiration Date: April 23, 1995.

On April 13, 1994, the Department of Environmental Protection and Energy (Department) proposed amendments to the oyster management rules at N.J.A.C. 7:25A. The Department is adopting the amendments without change, except that it is not adopting the proposed amendment at N.J.A.C. 7:25A-1.4 that added "and Energy" to the name of the Department. Under Reorganization Plan No. 001-1994 (see 26 N.J.R. 2171), the Department is reorganized and redesignated the "Department of Environmental Protection," rendering the proposed amendment unnecessary.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

7:25A-1.2 Purpose

The purpose of this subchapter is to provide an orderly procedure for the licensing of oyster vessels, the leasing of oyster grounds in Section E in Delaware Bay, and the taking of seed oysters from the State's natural seed beds and the possible direct sale of those oysters.

7:25A-1.9 Oyster seed beds

(a) The Division with the advice of the Delaware Bay Section of the Shellfisheries Council and the Haskin Shellfish Research

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Laboratory of Rutgers University, shall determine the season for the taking of seed oysters from the natural seed beds above the southwest line in Delaware Bay and shall determine which of the natural seed beds above the southwest line shall be opened. Reasonable notice shall be given by the Division to all oyster dredge boat license holders of the dates of the beds to be opened and the conditions attendant on the opening. Oyster seed beds shall be closed as determined in accordance with (i) below. Daily harvest shall be from 7:00 A.M. to 3:30 P.M. Monday through Friday.

(b) (No change.)

(c) Any vessel unable to plant its seed oysters because of mechanical problems, water conditions or other verifiable emergency must immediately contact the Shellfish Office by VHF radio, Channel 68, or by telephoning (609) 785-0730.

(d) All seed oysters shall be planted on the day taken by spreading them loosely on the bottom, not in bags, baskets, or other containers. All oysters taken from the natural beds are considered to be seed oysters until planted in the manner prescribed in this section. Seed oysters shall not be marketed or sold for any other purpose except that the Division with the advice of the Council may designate times, manner and section(s) of the natural seed beds from which seed oysters may be taken for market, barter, or other trade during any period when the natural seed beds are legally opened.

(e) Oysters taken pursuant to (d) above for market, barter or other trade shall be bagged or containerized in one bushel bags or containers on board the harvesting vessel with harvest tags furnished by the Division. Tags shall remain in place until the oysters are delivered for sale by the harvester.

1. The minimum size limit for seed oysters taken for market, barter or other trade shall be 2½ inches in height from hinge to lip.

(f) The Division with the advice of the Council may require harvesters authorized to harvest seed oysters from the natural seed beds to move specified quantities of seed oysters (other than those culled for market, barter or other trade) from one location on the natural seed beds to another during any period open for harvest from the seed beds as provided in (d) above.

(g) An Advisory Committee shall be appoined by the Commissioner and shall be composed of two members of the Council, two members of the Haskin Shellfish Research Laboratory of Rutgers University, and the Director of the Division or his or her designee.

(h) Physical tests of all areas opened pursuant to this subchapter shall be made near the end of each week by the Advisory Committee described in (g) above. These tests shall be the determining factor in the Advisory Committee's recommendation to close any or all beds opened by regulation.

(i) Based upon the data and tests referred to in (h) above and the recommendation of the Advisory Committee described in (g) above, the Council, with the approval of the Commissioner, may immediately close those beds as may be necessary for the preservation and improvement of the shellfish industry.

1. It shall be illegal to harvest seed oysters from any closed beds.

2. It shall be prima facie evidence of the violation of (i)1 above if any vessel is observed by Radar or LORAN or other reliable means to be on closed beds with dredge in water.

Recodify existing (i)-(r) as (j)-(s) (No change in text.)

7:25A-4.3 Fee

(a) A fee shall be collected from harvesters by dealers for each bushel of oysters landed at their permitted landing sites.

1. The fee shall be initially set at $0.35 per bushel except for seed oysters harvested for market, barter, or other trade. The fee for these oysters shall be initially set at the minimum rate of $1.25 per bushel.

2.-4. (No change.)

5. The fee for seed oysters taken for market, barter, or other trade, as provided for in N.J.A.C. 7:25A-1.9(d) will be collected by the Division of Fish, Game and Wildlife prior to harvest through the purchase of tags as provided for in N.J.A.C. 7:25A-1.9(e).

6. (No change in text.)

(a)

BOARD OF COMMISSIONERS OF PILOTAGE

Rules of the Board of Commissioners of Pilotage of the State of New Jersey

Drug Free Workplace Program

Adopted Amendments: N.J.A.C. 7:61-3.15 and 3.16

Proposed: June 6, 1994 at 26 N.J.R. 2238(a).

Adopted: July 21, 1994 by the Board of Commissioners of Pilotage, Hon. Edward B. Pulver, President.

Filed: August 10, 1994 as R.1994 d.449, **without change.**

Authority: N.J.S.A. 12:8-2.

DEPE Docket Number: 26-94-05/443.

Effective Date: September 6, 1994.

Expiration Date: May 17, 1998.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the adoption follows:

7:61-3.15 Notice to Board of criminal or Coast Guard charges and convictions

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

(c) The Association shall require any pilot or apprentice who tests positive for dangerous drugs or alcohol in a test required by any Federal or state statute or regulation, including a motor vehicle statute, to submit to a chemical drug test for dangerous drugs at the pilot's or apprentice's expense within 48 hours of such positive test and to be subject to increased, unannounced chemical drug testing for dangerous drugs and/or alcohol at the pilot's or apprentice's expense for a period as determined by the Board of up to 24 months.

7:61-3.16 Suspension or revocation of license/appointment

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

(c) Any pilot or apprentice who fails to comply or cooperate with specimen collection and/or chemical drug testing; or who tests positive on a chemical drug test required pursuant to this subchapter or a chemical drug test required pursuant to a Federal statute or regulations, including 46 C.F.R. part 16; or who is convicted under a Federal or state criminal drug statute or for a second conviction under any state motor vehicle statute for driving while under the influence or driving while intoxicated; or who violates any other provision of the subchapter, shall immediately be prohibited from engaging in pilotage operations and shall, after opportunity for a hearing, have his or her license/registration permanently revoked unless there are extenuating circumstances which, in the discretion of the Board, justify only the suspension of his or her license/registration.

(d)-(e) (No change.)

HEALTH

(b)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: March 7, 1994 at 26 N.J.R. 1190(b).

Adopted: August 9, 1994 by the Drug Utilization Review Council, Robert G. Kowalski, Chairman.

Filed: August 15, 1994 as R.1994 d.455, **with portions of the proposal not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: September 6, 1994.

Expiration Date: May 16, 1999.

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Summary of Public Comments and Agency Responses:
No comments were received pertaining to the products affected by this adoption.

Summary of Hearing Officer's Recommendations and Agency Responses:
A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on March 28, 1994. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. Seven persons attended the hearing. One comment was offered as summarized in a previous issue of the New Jersey Register (see 26 N.J.R. 2025(b)). The hearing officer recommended that the decisions be made based upon the available biodata. The Council adopted the products specified as "adopted," declined to adopt the products specified "not adopted," and referred the products identified as "pending" for further study. The hearing record may be reviewed by contacting Mark A. Strollo, R.Ph., M.S., Drug Utilization Review Council, Department of Health, CN 360, Trenton, NJ 08625-0360.

The following products and their manufacturers were **adopted** in accordance to the reformatting of N.J.A.C. 8:71 which follows a standardized format for each drug product listed:
The name of the substituted brand name drug:
The generic name of the drug product:
The strength of the drug product:
The dosage delivery system of the drug product (for example, cream, capsule, tablet):
The name of the generic drug's manufacturer:

ANAPROX Naproxen sodium 275 mg Tablet Roxane	NAPROSYN Naproxen 250 mg Tablet Roxane
ANAPROX Naproxen sodium 550 mg Tablet Roxane	NAPROSYN Naproxen 375 mg Tablet Roxane
NAPROSYN Naproxen 125 mg per 5 ml Suspension Roxane	NAPROSYN Naproxen 500 mg Tablet Roxane

The following products and their manufacturers were **not adopted and still pending**:

Albuterol sulfate syrup 2 mg/5 ml	Mova
Atenolol tabs 50 mg, 100 mg	Teva
Carbidopa/levodopa tabs 10/100, 25/100, 25/250	Geneva
Clotrimazole 1% top soln.	Lemmon
Dexchlorpheneramine maleate repetabs 4 mg, 6 mg	Amide
Diflunisal tabs 250 mg, 500 mg	Purepac
Diltiazem tabs 30 mg, 60 mg	Novopharm
Diltiazem tabs 30 mg, 60 mg, 90 mg, 120 mg	Teva
Endal HC substitute	Pharm. Assoc.
Gemfibrozil tabs 600 mg	Danbury
Glipizide tabs 5 mg, 10 mg	Danbury
Glipizide tabs 5 mg, 10 mg	Mylan
Levothyroxine sodium tabs 137 mcg	Rhone Poulenc
Methotrexate tabs 2.5 mg	Roxane
Metoclopramide tabs 5 mg	Biocraft
Metoprolol tartrate tabs 50 mg, 100 mg	Novopharm
Metoprolol tartrate tabs 50 mg, 100 mg	Teva
Nortriptyline HCl caps 10 mg, 25 mg, 50 mg, 75 mg	Lemmon
Oxazepam caps 10 mg, 15 mg, 30 mg	Geneva
Phenytoin 125 mg/5 ml oral suspension	Barre-National
Pindolol tabs 5 mg, 10 mg	Lemmon
Piroxicam caps 10 mg, 20 mg	Danbury
Terfenadine tabs 60 mg	Mutual
Trazodone tablets 150 mg	Mutual
Verapamil tabs 80 mg, 120 mg	Mylan

OFFICE OF ADMINISTRATIVE LAW NOTE: See also related notices of adoption at 26 N.J.R. 2025(b) and 2901(a).

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: January 3, 1994 at 26 N.J.R. 13(b).
Adopted: August 9, 1994 by the Drug Utilization Review Council, Robert G. Kowalski, Chairman.
Filed: August 15, 1994 as R.1994 d.456, **with portions of the proposal not adopted but still pending.**
Authority: N.J.S.A. 24:6E-6(b).
Effective Date: September 6, 1994.
Expiration Date: May 16, 1999.

Summary of Public Comments and Agency Responses:
No comments were received pertaining to the products affected by this adoption.

Summary of Hearing Officer's Recommendations and Agency Responses:
A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on January 24, 1994. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. One person attended the hearing. Two comments were offered, as summarized in previous issues of the New Jersey Register (see 26 N.J.R. 1348(a), 2096(a)). The hearing officer recommended that the decisions be made based upon the available biodata. The Council adopted the products specified as "adopted," declined to adopt the products specified "not adopted," and referred the products identified as "pending" for further study. The hearing record may be reviewed by contacting Mark A. Strollo, R.Ph., M.S., Drug Utilization Review Council, Department of Health, CN 360, Trenton, NJ 08625-0360.

The following products and their manufacturers were **adopted** in accordance to the reformatting of N.J.A.C. 8:71 which follows a standardized format for each drug product listed:
The name of the substituted brand name drug:
The generic name of the drug product:
The strength of the drug product:
The dosage delivery system of the drug product (for example, cream, capsule, tablet):
The name of the generic drug's manufacturer:

ANSAID Flurbiprofen 50 mg Tablet Mylan	HISTUSSIN HC Hydrocodone bitartrate 2.5 mg, phenylephrine HCl 5 mg, chlorpheniramine 2 mg Syrup DSC Labs
ANSAID Flurbiprofen 100 mg Tablet Mylan	

The following products and their manufacturers were **not adopted and still pending**:

Acebutol HCl caps 200 mg, 400 mg	Mylan
Amiloride/HCTZ 5/50 tablets	TEVA
Atenolol/chlorthalidone tablets 100/25, 50/25	Mylan
Cimetidine tablets 200 mg, 300 mg, 400 mg, 800 mg	Geneva
Clomipramine caps 25 mg, 50 mg, 75 mg	Geneva
Diltiazem tabs 30 mg, 60 mg, 90 mg, 120 mg	Zenith
Morphine Sulfate SR tabs 30, 60, 100 mg	Roxane
Nadolol tabs 20 mg, 40 mg, 80 mg	Mylan
Naproxen sodium tabs 275 mg, 550 mg	Zenith
Naproxen tabs 250 mg, 375 mg, 500 mg	Zenith
Neomycin/dexamethasone ophth soln	Pharmafair
Nitrofurantoin caps 25 mg, 50 mg, 100 mg	Geneva
Piroxicam caps 10 mg, 20 mg	Purepac
Poly-Histine-D elixir substitute	DSC Labs
Propoxyphene napsylate/APAP 100/650	Lemmon
Pseudophedrine/guaifenesin 120/600 tablets	Duramed
Sulfamethoxazole/trimethoprim suspension	TEVA

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OFFICE OF ADMINISTRATIVE LAW NOTE: See also related notices of adoption at 26 N.J.R. 1348(a) and 2096(a).

(a)

DRUG UTILIZATION REVIEW COUNCIL
List of Interchangeable Drug Products
Adopted Amendments: N.J.A.C. 8:71

Proposed: November 1, 1993 at 25 N.J.R. 4844(a).
Adopted: August 9, 1994 by the Drug Utilization Review Council, Robert Kowalski, Chairman.
Filed: August 15, 1994 as R.1994 d.457, **with portions of the proposal not adopted but still pending.**
Authority: N.J.S.A. 24:6E-6(b).
Effective Date: September 6, 1994.
Expiration Date: May 16, 1999.

Summary of Public Comments and Agency Responses:
The Drug Utilization Review Council received **no comments** pertaining to the products affected by this adoption. Note, however, that the proposed "Clemastine fumarate, 0.67 mg/5 ml, syrup, Lemmon" is adopted herein under the "TAVIST" generic, with 0.5 mg replacing 0.67 mg. This change reflects pure ingredient, rather than the ingredient salt amount.

Summary of Hearing Officer's Recommendations and Agency Responses:
A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on November 29, 1993. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. One person attended the hearing. One comment was received as summarized in a previous issue of the New Jersey Register (see 26 N.J.R. 362(b)). The hearing officer recommended that the decisions be made based upon the available biodata. The Council adopted the products specified as "adopted," declined to adopt the products specified "not adopted," and referred the products identified as "pending" for further study. The hearing record may be reviewed by contacting Mark A. Strollo, R.Ph., M.S., Drug Utilization Review Council, Department of Health, CN 360, Trenton, NJ 08625-0360.

The following products and their manufacturers were **adopted** in accordance to the reformatting of N.J.A.C. 8:71 which follows a standardized format for each drug product listed:
The name of the substituted brand name drug:
The generic name of the drug product:
The strength of the drug product:
The dosage delivery system of the drug product (for example, cream, capsule, tablet):
The name of the generic drug's manufacturer:

LOPRESSOR	TAVIST
Metoprolol tartrate	Clemastine fumarate
50 mg	0.5 mg/5 ml
Tablet	Syrup
Purepac	Lemmon
LOPRESSOR	
Metoprolol tartrate	
100 mg	
Tablet	
Purepac	

The following products and their manufacturers were **not adopted and still pending**:

Adenosine phosphate inj 25 mg/ml	Steris
Allopurinol tabs 300 mg	Geneva
Amiodarone tabs 200 mg	Alphapharm
Ascorbic Acid inj 222 mg/ml	Steris
Atenolol tabs 25 mg	Danbury
B Complex 100 inj	Steris
B Complex with C & B-12 inj	Steris
Betamethasone sod. phosphate inj 4 mg/ml	Steris
Bromocriptine mesylate tabs 2.5 mg	Danbury
Brompheniramine maleate inj 10 mg/ml	Steris
Bumetanide tabs 0.5 mg, 1 mg, 2 mg	Zenith
Buspirone HCl tabs 5 mg, 10 mg	Danbury
Calcitonin-salmon inj 200iu/ml	Arcola
Cefaclor caps 250 mg, 500 mg	Zenith
Chlorpheniramine maleate inj 10 mg/ml	Steris
Chlorpromazine HCl inj 25 mg/ml	Steris
Chorionic gonadotropin 5,000u, 10,000u	Steris
Cimetidine tabs 200 mg, 300 mg, 400 mg, 800 mg	Mylan
Desipramine tabs 10, 25, 50, 75, 100, 150 mg	Danbury
Dexamethasone acetate susp. inj 8 mg/ml	Steris
Dexamethasone NaPO4 inj 4 mg/ml, 10 mg/ml	Steris
Dexpanthenol inj 250 mg/ml	Steris
Diazepam inj 5 mg/ml	Steris
Dicyclomine HCl inj 10 mg/ml	Steris
Dimenhydrinate inj 50 mg/ml	Steris
Diphenhydramine HCl inj 10 mg/ml, 50 mg/ml	Steris
Dyphylline GG liquid	Hi-tech
Edetate disodium inj 150 mg/ml	Steris
Estradiol cypionate inj 5 mg/ml	Steris
Estradiol valerate inj 20 mg/ml, 40 mg/ml	Steris
Fiorinal tabs substitute	Danbury
Fluphenazine HCl tabs 1 mg, 2.5 mg, 5 mg, 10 mg	Danbury
Isosorbide dinitrate tabs 20 mg, 30 mg, 40 mg	Danbury
Methylprednisolone tabs 4 mg, 16 mg	Danbury
Metoclopramide HCl tabs 5 mg	Danbury
Nadolol tabs 20 mg, 40 mg, 80 mg, 120 mg, 160 mg	Zenith
Nadolol tabs 40 mg, 80 mg, 120 mg	Danbury
Naproxen sodium tabs 275 mg, 550 mg	Mylan
Naproxen tabs 250 mg, 375 mg, 500 mg	Mylan
Nortriptyline caps 10 mg, 25 mg, 50 mg, 75 mg	Mylan
Primidone tabs 250 mg	Linnett
Propoxyphene/APAP tabs 100/650	Danbury
Spironolactone/HCTZ tabs 50/50	Danbury
Terfenadine tabs 60 mg	Geneva
Trazodone HCl tabs 150 mg	Danbury
Triamterene/HCTZ caps 50/25	Zenith
Triazolam tabs 0.125 mg, 0.25 mg	Alphapharm

OFFICE OF ADMINISTRATIVE LAW NOTE: See also related notices of adoption at 26 N.J.R. 362(b), 1347(b) and 2095(a).

(b)

DRUG UTILIZATION REVIEW COUNCIL
List of Interchangeable Drug Products
Adopted Amendments: N.J.A.C. 8:71

Proposed: May 2, 1994 at 26 N.J.R. 1822(a).
Adopted: August 9, 1994 by the Drug Utilization Review Council, Robert G. Kowalski, Chairman.
Filed: August 15, 1994 as R.1994 d.458, **with portions of the proposal not adopted but still pending.**
Authority: N.J.S.A. 24:6E-6(b).
Effective Date: September 6, 1994.
Expiration Date: May 16, 1999.

Summary of Public Comments and Agency Responses:
The Drug Utilization Review Council received the following comments pertaining to the products affected by this adoption.

COMMENT: From Camall Company in opposition to the deletion of its products from the Formulary.

Eugene Schmall, representing Camall Company, stated, via telephone, that the issues raised in the latest FDA 483 report were addressed and resolved. Mr. Schmall also noted that the Camall products have not been subject to any recalls. Mr. Schmall is contacting the FDA to resolve the report of cGMP noncompliance. Camall requested that the Council defer this issue pending the clarification from the FDA on cGMP compliance.

RESPONSE: The Council confirmed with the FDA that there are no outstanding cGMP noncompliance issues with the Camall Company. The Council rejected the proposal for deletion of products manufactured by Camall.

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COMMENT: From Nutripharm Laboratories in opposition to the proposed deletion of its Midrin substitute from the Formulary.

Nutripharm forwarded a copy of its recent FDA 483 report and responses in support of retaining its product in the Formulary.

RESPONSE: Verification of compliance with cGMPs from the FDA or an independent consultant was not received. The Council approved the deletion of the proposed Nutripharm product from the Formulary.

COMMENT: From Bio-Pharm in opposition to the proposed deletion of its Tigan suppository substitute from the Formulary.

Bio-Pharm forwarded a copy of its recent FDA 483 report and responses in support of retaining its product in the Formulary. Bio-Pharm also noted that no action has been taken against its products by any Federal, state or municipal agency.

RESPONSE: Based on the results of the FDA re-inspection concluded on August 2, 1994, the Council approved the deletion of the proposed Bio-Pharm product.

COMMENT: From Ambix Laboratories in opposition to the proposed deletion of its products from the Formulary.

Ambix stated that it is working with the FDA to meet cGMP compliance.

RESPONSE: The Council approved the deletion of the proposed Ambix products since verification of compliance with cGMPs was not received.

COMMENT: From Halsey Drug Company in opposition to the proposed deletion of its products from the Formulary.

Mr. Bernard Sandiford, representing Halsey Drug Company, submitted a sworn affidavit which reviewed the recent cGMP noncompliance issues and the action taken to resolve them. Halsey did not object to the deletion of products that it is no longer manufacturing. Halsey requested that the Council defer taking action on the products it is currently manufacturing pending the outcome of FDA's action.

RESPONSE: On June 14, 1994, the Council deleted those products not being manufactured based on cGMP issues. For the remaining Halsey products, the Council deferred taking action to allow for the resolution of the cGMP noncompliance issues with the FDA or, if necessary, the completion of an inspection, conducted by an independent expert who is approved by the Council, and paid for by the manufacturer, to be completed by August 9, 1994.

At the August 9, 1994 meeting, an independent report from Dr. Anthony Cutie which supported the compliance of cGMPs at Halsey Drug Company was presented. The Council rejected the proposal to delete the remaining proposed tablets and capsules manufactured by Halsey from the Formulary.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on May 23, 1994. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. Seven persons attended the hearing. Eight comments were offered as summarized above in a previous issue of the New Jersey Register (see 26 N.J.R. 2899(a)). The hearing officer recommended that the decisions be made based upon the available information and evidence. The Council deleted the products specified as "adopted," declined to delete the products specified "not adopted," and referred the products identified as "pending" for further study. The hearing record may be reviewed by contacting Mark A. Strollo, R.Ph., M.S., Drug Utilization Review Council, Department of Health, CN 360, Trenton, NJ 08625-0360.

The **deletion** of the following products and their manufacturers were **adopted** in accordance to the reformatting of N.J.A.C. 8:71 which follows a standardized format for each drug product listed:

The name of the substituted brand name drug:
The generic name of the drug product:
The strength of the drug product:
The dosage delivery system of the drug product (for example, cream, capsule, tablet):
The name of the generic drug's manufacturer:

AURALGAN
Antiprine 54 mg with benzocaine 14 mg
Per ml
Solution, otic
Ambix

HYTONE
Hydrocortisone
1%
Cream
Ambix

HYTONE
Hydrocortisone
2.5%
Cream
Ambix

MIDRIN
Acetominophen, dichloralphenazone, isometheptene mucate
325/100/65 mg
Capsule
Nutripharm

TIGAN
Trimethobenzamide HCl
100 mg
Suppository
Bio-Pharm

TIGAN
Trimethobenzamide HCl
200 mg
Suppository
Bio-Pharm

The following products and their manufacturers were **deferred, and still pending**:

Chase:
Amantadine HCl caps 100 mg
Clofibrate caps 500 mg
Nifedipine caps 10 mg, 20 mg
Valproic acid caps 250 mg

Biocraft:
Albuterol sulfate tabs 2 mg, 4 mg
Amiloride HCl, hydrochlorothiazide tabs 5/50 mg
Amitriptyline tabs 10 mg, 25 mg, 50 mg, 75 mg, 100 mg
Amoxicillin as the trihydrate caps 250 mg, 500 mg
Amoxicillin as the trihydrate tabs 250 mg
Amoxicillin as the trihydrate susp 250 mg/5 mg
Amoxicillin as the trihydrate susp 125 mg/5 ml
Ampicillin/ampicillin trihydrate susp 250 mg/5 ml
Ampicillin/ampicillin trihydrate susp 125 mg/5 ml
Ampicillin/ampicillin trihydrate caps 250 mg
Ampicillin/ampicillin trihydrate caps 500 mg
Baclofen tabs 10mg, 20 mg
Cephalexin susp 125 mg/5 ml, 250 mg/5 ml
Cephalexin caps 250 mg, 500 mg
Cephalexin tabs 250 mg, 500 mg
Cephadrine caps 250 mg, 500 mg
Cephadrine susp 125 mg/5 ml, 250 mg/5 ml
Cinoxacin caps 250 mg, 500 mg
Cloxacillin sodium monohydrate caps 250 mg, 500 mg
Cloxacillin sodium monohydrate syrup 125 mg/5 ml
Dicloxacillin sodium monohydrate caps 250 mg, 500 mg
Disopyramide phosphate caps 100 mg, 150 mg
Hydrocortisone cream 1%
Imipramine HCl tabs 10 mg, 25 mg, 50 mg
Ketoprofen caps 25 mg, 50 mg, 75 mg
Metaproterenol tabs 10 mg, 20 mg
Metaproterenol syrup 10 mg/5 ml
Metoclopramide tabs 10 mg
Metoclopramide syrup 5 mg/5 ml
Minocycline HCl caps 50 mg, 100 mg
Nystatin susp 100,000u/ml
Penicillin G potassium tabs 200,000u, 400,000u
Penicillin VK tabs 250 mg, 500 mg
Penicillin VK for sol. 125 mg/5 ml, 250 mg/5 ml
Sulfamethoxazole/TMP susp 200/40 mg per 5 ml
Sulfamethoxazole/TMP tabs 400/80 mg, 800/160 mg
Trimethoprim tabs 100 mg, 200 mg

Halsey:
Belladonna alkaloids, phenobarbital elixir
Codeine phosphate/guaifenesin liq 10/100 mg per 5 ml
Cyproheptadine HCl syrup 2 mg/5 ml
Diphenhydramine HCl elixir 12.5 mg/5 ml
Ephedrine/hydroxyzine/theophylline liq 6.25/2.5/32.5 mg per 5 ml
Guaifenesin/codeine/pseudoephedrine liq 100/10/30 mg per 5 ml
Homatropine MBr/hydrocodone butartrate syrup 1.5/5 mg per 5 ml
Hydrocodone bitartrate/phenylpropanolamine syrup 2.5/12.5 mg per 5 ml
Hydrocodone bitartrate/phenylpropanolamine syrup 5/25 mg per 5 ml

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Phenylpropanolamine/phenylephrine/guaifenesin liq 20/5/100 mg per 5 ml
Potassium chloride liq 10%
Promethazine HCl syrup 6.25 mg/5 ml
Promethazine/codeine syrup 6.25/10 mg per 5 ml
Promethazine/phenylephrine syrup 6.25/5 mg per 5 ml
Promethazine/DM syrup 6.25/15 mg per 5 ml
Promethazine/phenylephrine/codeine syrup 6.25/5/10 mg per 5 ml
Theophylline elixir 80 mg/15 ml
Theophylline/guaifenesin liq 150/90 mg per 15 ml

Sidmak:
Albuterol sulfate tabs 2mg, 4 mg
Amitriptyline tabs 10 mg, 25 mg, 50 mg, 75 mg, 100 mg, 150 mg
Benztropine mesylate tabs 0.5 mg, 1 mg, 2 mg
Bethanechol CL tabs 5 mg, 10 mg, 25 mg, 50 mg
Chlorpropamide tabs 100 mg, 250 mg
Choline magnesium salicylate tabs 500 mg, 750 mg, 1 g
Cyproheptadine HCl tabs 4 mg
Desipramine HCl tabs 25 mg, 50 mg, 75 mg
Dipyridamole tabs 25 mg, 50 mg, 75 mg
Doxycycline hyclate caps 100 mg
Griseofulvin ultramicrosize tabs 165 mg, 330 mg
Hydralazine HCl tabs 10 mg, 25 mg, 50 mg, 100 mg
Hydroxyzine HCl tabs 10 mg, 25 mg, 50 mg
Ibuprofen tabs 400 mg, 600 mg, 800 mg
Indomethacin caps 25 mg, 50 mg
Meclizine HCl tabs 12.5 mg, 25 mg
Methyldopa tabs 125 mg, 250 mg, 500 mg
Metronidazole tabs 250 mg, 500 mg
Nystatin vaginal tabs 100,000u
Oxybutynin CL tabs 5 mg
Procainamide SR tabs 250 mg, 500 mg
Propranolol tabs 10 mg, 20 mg, 40 mg, 60 mg, 80 mg, 90 mg
Propranolol/hydrochlorothiazide tabs 40/25 mg, 80/25 mg
Salsalate tabs 500 mg, 750 mg
Sufamethoxazole/TMP tabs 400/80 mg, 800/160 mg
Theophylline tabs 100mg, 200 mg, 300 mg, 450 mg
Trazodone HCl tabs 50 mg, 100 mg, 150 mg
Verapamil HCl tabs 80 mg, 120 mg

The following products and their manufacturers were **not adopted** and, therefore, the products have been retained in the Formulary:

ACHROMYCIN V
Tetracyline HCl
500 mg
Capsule
Halsey

ANTIVERT
Meclizine HCl
12.5 mg
Tablet
Camall

ANTIVERT
Meclizine HCl
25 mg
Tablet
Camall

FIORINAL
Acetaminophen, butalbital and caffeeine
325/50/40 mg
Tablet
Halsey

HYDRODIURIL
Hydrocholothiazide
25 mg
Tablet
Camall

HYDRODIURIL
Hydrocholothiazide
50 mg
Tablet
Camall

PERCOCET
Oxycodone HCl with acetaminophen
5/325 mg
Tablet
Halsey

PERIACTIN
Cyproheptadine HCl
4 mg
Tablet
Camall

TYLOX
Oxycodone HCl 5 mg with acetaminophen 500 mg
Per capsule
Capsule
Halsey

VIBRAMYCIN
Doxycycline hyclate
50 mg
Capsule
Halsey

VIBRAMYCIN
Doxycyline hyclate
100 mg
Capsule
Halsey

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notice of adoption at 26 N.J.R. 2898(a).

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: May 2, 1994 at 26 N.J.R. 1821(a).
Adopted: August 9, 1994 by the Drug Utilization Review Council, Robert G. Kowalski, Chairman.
Filed: August 15, 1994 as R.1994 d.459, **with portions of the proposal not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: September 6, 1994.
Expiration Date: May 16, 1999.

Summary of Public Comments and Agency Responses:

The Drug Utilization Review Council received the following comment pertaining to the products affected by this adoption.

COMMENT: From Wyeth-Ayerst Laboratories in opposition to the Syntex levonorgestrel with ethinyl estradiol tablets.

Wyeth-Ayerst raised concern of the criteria utilized by the Council (and the FDA) to determine bioequivalency. It is suggested that since mean data is evaluated, there is potential problems for subjects with high or low values. Wyeth-Ayerst argued that since the testing design allows for a 20 percent range of variability for brand, which is used as a reference, a lower range accepted brand could potentially allow for a subtherapeutic generic to pass the criteria. It was also contended that supra-therapeutic generics could be accepted bioequivalent if a brand at the upper acceptable range was utilized. Wyeth-Ayerst concluded that sub- or supra-therapeutic generics would defeat the premise of cost containment with therapeutic failures which cause expenditures for abortion or child delivery and rearing.

Wyeth-Ayerst suggested that compliance would be negatively impacted by the change in appearance of the oral contraceptive packaging. Wyeth-Ayerst informed the Council of patient education and counseling services provided to patients taking the brand, Nordette, which increases compliance and potentially reduces sexually transmitted diseases.

RESPONSE: The Council approved the Syntex substitute for Nordette based on the bioequivalency study and statistical analysis of the data.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on May 23, 1994. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. Seven persons attended the hearing. One comment was offered as summarized above and in a previous issue of the New Jersey Register (see 26 N.J.R. 2897(a)). The hearing officer recommended that the decisions be made based upon the available biodata. The Council adopted the products specified as "adopted," declined to adopt the products specified "not adopted," and referred the products identified as "pending" for further study. The hearing record may be reviewed by contacting Mark A. Strollo, R.Ph., M.S., Drug Utilization Review Council, Department of Health, CN 360, Trenton, NJ 08625-0360.

The following products and their manufacturers were **adopted** in accordance to the reformatting of N.J.A.C. 8:71 which follows a standardized format for each drug product listed:
The name of the substituted brand name drug:
The generic name of the drug product:
The strength of the drug product:
The dosage delivery system of the drug product (for example, cream, capsule, tablet):
The name of the generic drug's manufacturer:

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NORDETTE
Levonorgestrel with ethinyl estradiol
0.15 mg/0.3 mg
Tablet
Syntex

XANAX
Alprazolam
0.25 mg
Tablet
Zenith

XANAX
Alprazolam
0.5 mg
Tablet
Zenith

XANAX
Alprazolam
1 mg
Tablet
Zenith

XANAX
Alprazolam
2 mg
Tablet
Zenith

The following products and their manufacturers were rejected and, therefore, **not adopted**:

FELDENE
Piroxicam
10 mg
Capsule
Novopharm

The following products and their manufacturers were **not adopted and still pending**:

Cefaclor capsules 250 mg, 500 mg	Lederle
Cefaclor susp 125 mg/5 ml, 187 mg/5 ml	Lederle
Cefaclor susp 250 mg/5 ml, 375 mg/5 ml	Lederle
Cimetadine 300 mg/2 ml injection	Dupont Pharma
Cimetadine 300 mg/5 ml oral solution	Dupont Pharma
Clobetasol propionate 0.05% cream	Copley
Clobetasol propionate 0.05% oint	Copley
Diltiazem CD caps 60 mg, 90 mg, 120 mg	Blue Ridge
Diltiazem tabs 30 mg, 60 mg, 90 mg, 120 mg	Mutual
Glipizide tablets 5 mg, 10 mg	Dupont Pharma
Guanabenz acetate tabs 4 mg, 8 mg	Zenith
Hyoscyamine sulfate ER tabs 0.375 mg	Contract
Indapamide tabs 2.5 mg	Zenith
Isoniazid 100 mg, 300 mg tabs	Barr
Materna vitamin tabs substitute	Anabolic
Metoprolol tartrate tabs 50 mg, 100 mg	Copley
Naproxen sodium tabs 275 mg, 550 mg	Purepac
Pindolol tabs 5 mg, 10 mg	Novopharm
Piroxicam caps 10 mg, 20 mg	Zenith
Piroxicam caps 20 mg	Novopharm
Prenate 90 vitamin tabs substitute	Lini
Sucralfate tablets 1 gm	Blue Ridge
Sulfadiazine tabs 500 mg	Eon
Terfenadine tabs 60 mg	Blue Ridge
Terfenadine/pseudoephrine tabs 60/120	Blue Ridge

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notice of adoption at 26 N.J.R. 2897(a).

(a)

DRUG UTILIZATION REVIEW COUNCIL
List of Interchangeable Drug Products
Adopted Amendments: N.J.A.C. 8:71

Proposed: July 5, 1994 at 26 N.J.R. 2723(a).
Adopted: August 9, 1994 by the Drug Utilization Review Council, Robert G. Kowalski, Chairman.
Filed: August 15, 1994 as R.1994 d.460, **with portions of the proposal not adopted but still pending.**
Authority: N.J.S.A. 24:6E-6(b).
Effective Date: September 6, 1994.
Expiration Date: May 16, 1999.

Summary of Public Comments and Agency Responses:
No comments were received.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on July 25, 1994. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. One person attended the hearing. No comments were offered. The hearing officer recommended that the decisions be made based upon the available biodata. The Council adopted the products specified as "adopted," declined to adopt the products specified "not adopted," and referred the products identified as "pending" for further study. The hearing record may be reviewed by contacting Mark A. Strollo, R.Ph., M.S., Drug Utilization Review Council, Department of Health, CN 360, Trenton, NJ 08625-0360.

The following products and their manufacturers were **adopted** in accordance to the reformatting of N.J.A.C. 8:71 which follows a standardized format for each drug product listed:
The name of the substituted brand name drug:
The generic name of the drug product:
The strength of the drug product:
The dosage delivery system of the drug product (for example, cream, capsule, tablet):
The name of the generic drug's manufacturer:

ALDORIL
Methyldopa 250 mg with Hydrochlorothiazide 15 mg
Tablet
Lederle

ALDORIL
Methyldopa 250 mg with Hydrochlorothiazide 25 mg
Tablet
Lederle

BETAGAN
Levobunolol HCl
0.25%
Ophth solution
Pacific Pharma

BETAGAN
Levobunolol HCl
0.025%
Ophth solution
Sight

BETAGAN
Levobunolol HCl
0.5%
Ophth solution
Sight

CORTISPORIN
Bacitracin zinc 400U, polymyxin B sulfate 10,000U, hydrocortisone 1%, neomycin sulfate 0.5%
Per gm
Ophth ointment
Altana

DECADRON OPHTHALMIC
Dexamethasone sodium phosphate 0.1%
Ophth solution
Pharmafair/Sight

DECADRON OPHTHALMIC
Dexamethasone sodium phosphate 0.05%
Ophth ointment
Pharmafair/Sight

DYAZIDE
Triamterene/hydrochlorothiazide
37.5 mg/25 mg
Capsule
Penn Labs

ENTEX
Phenylpropranolamine HCl 20 mg, phenylephrine HCl 5 mg, guaifenesin 100 mg
Per 5 ml
Liquid
KV Pharm

FLURESS
Fluorescein sodium 0.25%, proparacaine 0.5%
Ophth solution
Akorn/Taylor

GARAMYCIN
Gentamicin 0.3%
Ophth solution
Pharmafair/Sight-B&L

HISTUSSIN HC
Hydrocodone bitartrate 2.5 mg, phenylephrine HCl 5 mg, chlorpheniramine 2 mg
Syrup
KV Pharm

HYCOTUSS
Hydrocodone bitartrate 5 mg, guaifenesin 100 mg
Per 5 ml
Liquid
KV Pharm

INFLAMASE MILD
Prednisolone sodium phoisphate 0.125%
Ophth solution
Pharmafair/Sight-B&L

INFLAMASE FORTE
Prednisolone sodium phosphate 1%
Ophth solution
Pharmafair/Sight-B&L

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INTAL
Cromolyn sodium
20 mg/2 ml
Solution
Dey

LEVSIN
L-hyoscyamine sulfate
0.125 mg
Tablet
Anabolic

MAXITROL
Dexamethasone 0.1%,
neomycin sulfate 0.5%,
polymyxin B sulfate 10,000U
Ophth ointment
Altana

MAXITROL
Dexamethasone 0.1%,
neomycin sulfate 0.5%,
polymyxin B sulfate 10,000U
Ophth suspension
Steris

NEOSPORIN
Gramicidin 0.025 mg, neomycin as sulfate 1.75 mg, polymyxin B sulfate 10,000U Per ml
Ophth solution
Pharmafair/Sight

NEO-SYNEPHRINE
Phenylephrine HCl 2.5%
Ophth solution
Akorn/Taylor

NEO-SYNEPHRINE
Phenylephrine HCl 10%
Ophth solution
Akorn/Taylor

RYNATAN PEDIATRIC SUSPENSION
Chlorpheniramine 2 mg,
phenylephrine 5 mg,
pyrilamine 12.5 mg (each as the tannate)
Suspension
DSC Labs

SULFACET-R
Sodium sulfacetamide 10% with sulfur 5%
Lotion
Stiefel

SULAMYD
Sulfacetamide sodium 10%
Ophth solution
Pharmafair/Sight

TAGAMET
Cimetidine
300 mg per 5 ml
Solution
Barre-National

TAGAMET
Cimetidine
200 mg
Tablet
Novopharm

TAGAMET
Cimetidine
300 mg
Tablet
Novopharm

TAGAMET
Cimetidine
400 mg
Tablet
Novopharm

TAGAMET
Cimetidine
800 mg
Tablet
Novopharm

TAGAMET
Cimetidine
300 mg
Tablet
Penn Labs

TAGAMET
Cimetidine
400 mg
Tablet
Penn Labs

TAGAMET
Cimetidine
800 mg
Tablet
Penn Labs

THEO-DUR
Theophylline
100 mg
Tablet
Warrick

THEO-DUR
Theophylline
200 mg
Tablet
Warrick

THEO-DUR
Theophylline
300 mg
Tablet
Warrick

THEO-DUR
Theophylline
450 mg
Tablet
Warrick

TOBREX
Tobramycin
0.3%
Ophth solution
Sight

VASOCON
Naphazoline HCl 0.1%
Ophth solution
Pharmafair/Sight

The following products and their manufacturers were rejected and, therefore, **not adopted**:

MS CONTIN
Morphine sulfate SR
30 mg
Tablet
Roxane

MS CONTIN
Morphine sulfate SR
60 mg
Tablet
Roxane

MS CONTIN
Morphine sulfate SR
100 mg
Tablet
Roxane

The following products and their manufacturers were **not adopted and still pending**:

BACITRACIN
Bacitracin 500 units
Per gm
Ointment
Atlanta

BACTRIM
Sulfamethoxazole/trimethoprim
400 mg/80 mg
Tablet
Par

BACTRIM
Sulfamethoxazole/trimethoprim
800 mg/160 mg
Tablet
Par

CHLOROPTIC S.O.P.
Chloramphenicol 0.5%
Ophth ointment
Pharmafair/Sight

CHLOROPTIC
Chloramphenicol 1%
Ophth solution
Pharmafair/Sight

CORTISPORIN
Polymyxin B sulfate 10,000U,
neomycin sulfate 3.5 mg as base, hydrocortisone 1%
Per ml
Otic solution
Pharmafair/Sight

DESYREL
Trazodone HCl
150 mg
Tablet
Teva

FLUORESCITE
Fluorescein 10%
Injection
Akorn/Taylor

FUNDUSCEIN
Fluorescein 25%
Injection
Akorn/Taylor

GLUCOTROL
Glipizide
5 mg
Tablet
Geneva

GLUCOTROL
Glipizide
10 mg
Tablet
Geneva

GLUCOTROL
Glipizide
5 mg
Tablet
Mylan

GLUCOTROL
Glipizide
10 mg
Tablet
Mylan

LOPRESSOR
Metoprolol tartrate
50 mg
Tablet
Geneva

LOPRESSOR
Metoprolol tartrate
100 mg
Tablet
Geneva

NAPHCON A
Naphazoline HCl 0.25%,
pheniramine maleate 0.3%
Ophth solution
Akorn/Taylor

NEO-DECADRON
Neomycin (as sulfate) 3.5 mg,
dexamethasone sodium phosphate 1 mg
Per ml
Ophth solution
Pharmafair/Sight

NOVAFED A
Pseudoephedrine HCl with chlorpheniramine maleate
120/8 mg
Capsule
Kenmont Labs

ORUDIS
Ketoprofen
50 mg
Capsule
Geneva

ORUDIS
Ketoprofen
75 mg
Capsule
Geneva

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POLYSPORIN
Bacitracin zinc 500U, polymyxin B sulfate 10,000U
Per gm
Ophth ointment
Pharmafair/Sight

TAGAMET
Cimetidine
200 mg
Tablet
Danbury

TAGAMET
Cimetidine
300 mg
Tablet
Danbury

TAGAMET
Cimetidine
400 mg
Tablet
Danbury

TAGAMET
Cimetidine
800 mg
Tablet
Danbury

TAGAMET
Cimetidine
200 mg
Tablet
Lemmon

TAGAMET
Cimetidine
300 mg
Tablet
Lemmon

TAGAMET
Cimetidine
400 mg
Tablet
Lemmon

TAGAMET
Cimetidine
800 mg
Tablet
Lemmon

XANAX
Alprazolam
0.25 mg
Tablet
Danbury

XANAX
Alprazolam
0.5 mg
Tablet
Danbury

XANAX
Alprazolam
0.1 mg
Tablet
Danbury

XANAX
Alprazolam
0.25 mg
Tablet
Geneva

XANAX
Alprazolam
0.5 mg
Tablet
Geneva

XANAX
Alprazolam
0.1 mg
Tablet
Geneva

HIGHER EDUCATION

(a)

EDUCATIONAL OPPORTUNITY FUND

Administrative Policies and Procedures

Graduate EOF Financial Eligibility; C. Clyde Ferguson Law Scholarship; and Martin Luther King Physician-Dentist Scholarship

Adopted New Rules: N.J.A.C. 9:11-2, 3 and 4

Proposed: May 16, 1994 at 26 N.J.R. 1932(a).
Adopted: August 15, 1994 by the Educational Opportunity Fund Board of Directors, Judith Cambria, Chairperson.
Filed: August 15, 1994 as R.1994 d.452, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 18A:71-33.
Effective Date: September 6, 1994.
Expiration Date: April 11, 1999.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes:
The following technical changes have been made to correct the referenced citations. The Department of Higher Education and Board of Higher Education were abolished effective June 30, 1994 and replaced by the Commission on Higher Education. The citation correction is required to reflect the appropriate name of the agency responsible for higher education.

In proposed N.J.A.C. 9:11-2.2(b)4, the words "State Board of" have been changed to "Commission on."

In proposed N.J.A.C. 9:11-2.7(e)2, the abbreviation "DHE" has been changed to "Commission."

In proposed N.J.A.C. 9:11-2.8(f), the abbreviation "DHE" has been changed to "Commission."

In proposed N.J.A.C. 9:11-2.8(h), the words "Department of" have been changed to "Commission on."

In proposed N.J.A.C. 9:11-2.14(f), the words "Department of" have been changed to "Commission on."

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

SUBCHAPTER 2. GRADUATE EOF FINANCIAL ELIGIBILITY

9:11-2.1 Scope and purpose

(a) The following provisions of this subchapter govern the determination of financial eligibility for graduate financial assistance from the New Jersey Educational Opportunity Fund (EOF) based on need and potential for success in college.

(b) The EOF Program was created by law in 1968 to ensure meaningful access to higher education for students who are from families disadvantaged by low income and who have not had access to the quality educational preparation necessary to attend college, which implies that either the family has endured long-term economic deprivation or that the student represents a segment of the population underrepresented in higher education, or both. Families in this status are generally characterized by little or no accumulation of assets, and the inability to provide for more than the basic needs of family members. Eligible students are, as a rule, the first generation to attend college in their families.

(c) The overall objective of the graduate EOF Program is to increase the participation of New Jersey residents from backgrounds of historical poverty in graduate and professional study.

(d) There shall be no discrimination in admission decisions based on race, age, creed, religion, marital status, national origin, color, gender, sexual orientation, or disability.

(e) Priority in granting of EOF graduate grants shall be given to those students who received EOF undergraduate grants.

9:11-2.2 Student eligibility

(a) The academic deficiencies that serve to identify the undergraduate student as educationally disadvantaged are not applicable at the graduate level. The graduate EOF Program is designed to provide the opportunity for New Jersey residents whose undergraduate record reflects the potential for advanced study beyond the baccalaureate degree and whose economic background reflects a history of poverty.

(b) To be initially eligible for an Educational Opportunity Fund graduate grant, a student must have demonstrated that he or she:

1. Is and has been a legal resident of the State of New Jersey for at least 12 consecutive months prior to receiving the grant;

2. Meets the financial criteria established in N.J.A.C. 9:11-2.5, Financial eligibility for graduate grants;

3. Is or will be a full-time graduate student as defined by the institution offering the graduate program of study; and

4. Is enrolled or intends to be enrolled full-time and matriculated in a curriculum leading to a graduate degree or certificate at an institution of collegiate grade in New Jersey approved or licensed by the *[State Board of]* ***Commission on*** Higher Education and participating in the EOF Program, provided that the student has not already received a graduate or professional degree at the same level of study for which he or she is applying. Graduate EOF degree

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or certificate programs must have a minimum requirement equivalent to 24 semester hours and be at least one academic year in duration.

(c) Students may not receive assistance under the programs administered by the EOF Board of Directors if they owe a refund on a grant or scholarship previously received from a State or Federal program through any institution or are in default on any loan made under any State or Federal student financial assistance program at any institution. Students owing a refund on a grant or scholarship or who are in default on a loan may receive State financial assistance if they make arrangements with the appropriate office to repay the debt.

(d) EOF graduate grant awards shall not be used by students attending out-of-State institutions.

9:11-2.3 Student residency

(a) Students must be legal residents of New Jersey for a period of not less than 12 consecutive months immediately prior to receiving a grant.

(b) The residence of a student is defined in terms of domicile. Domicile is defined as the place where a person has his or her true, fixed, permanent home and principal establishment and to which, whenever he or she is absent, he or she has the intention of returning.

(c) Residence established solely for the purpose of attending a particular college cannot be considered as fulfilling the definition of domicile.

(d) When in question, a student must demonstrate proof of residence by presenting one of the following documents:

1. A driver's license;
2. A voter registration form; or
3. Tax returns.

9:11-2.4 Foreign nationals

(a) A foreign national must present affirmative evidence that he or she is not in the United States for the temporary purpose of obtaining an education. Such evidence must include documentation from the United States Immigration and Naturalization Service that the student may remain permanently in this country and such evidence must be placed in the student's file. The student must:

1. Be the holder of an Alien Registration Receipt Card form I-151 or I-551;

2. Be the holder of an Approval Notice from the Immigration and Naturalization Service form I-181 stating that the non-citizen has met the requirements for Permanent Resident status;

3. Be the holder of a Temporary Resident Card form I-688 with a valid expiration date from the Immigration and Naturalization Service; or

4. Be the holder of an Arrival Departure Record form I-94 endorsed by the Immigration and Naturalization Service showing one of the following:

i. Parole Indefinite Humanitarian: Paroled pursuant to Sec. 212(d)(5) of the Immigration and Naturalization Act;

ii. Refugees: Admitted as a refugee pursuant to Sec. 207 of the Immigration and Naturalization Act;

iii. Granted Asylum: Asylum status granted pursuant to Sec. 208 of the Immigration and Naturalization Act;

iv. Cuban-Haitian Entrant: Status pending; or

v. Conditional Entrant: Admission into this status through March 31, 1980.

(b) The Arrival Departure Record form I-94 for persons in the categories in (a) above must be updated for each award year as required by the Immigration and Naturalization Service.

(c) Foreign Nationals with Student Visa Status, F1 or F2 Exchange Visitor Visa status of J1 or J2 Visa status even when stamped "employment authorized," or holders of form I-94 with one of the endorsements: "adjustment applicant," "245," "245 applicant," "applicant for permanent residence," "voluntary departure," and "deferred action," are considered to be in the United States for temporary reasons and are therefore not eligible for student assistance.

9:11-2.5 Financial eligibility for graduate grants

(a) A graduate student who demonstrates evidence of a background of historical poverty as defined in N.J.A.C. 9:11-2.1 or by meeting the criteria set forth in (d)1 through 5 below is financially eligible for an EOF graduate grant if the student and/or the student's spouse's gross income for the base year prior to the academic year for which aid is requested does not exceed the applicable amount set forth in the EOF graduate student income eligibility scale:

1. $10,600—family size (including student) 1;
2. $13,490—family size (including spouse) 2;
3. $16,670—family size (including spouse) 3;
4. $19,660—family size (including spouse) 4;
5. $23,000—family size (including spouse) 5;
6. Add $2,600 for each additional dependent. This amount should be adjusted annually to reflect changes in the Independent Student Income Protection Allowance as published in the Federal Register; and
7. A graduate student who received welfare as the primary means of family support is presumed to be eligible without regard to the amount of primary welfare support.

(b) In determining the financial eligibility of graduate students, separation, divorce, or death of a wage earner in the base year prior to the academic year for which eligibility is being determined, with an accompanying decrease in family income below the EOF income eligibility scales, does not automatically satisfy the family characteristic of historical poverty (as stated in N.J.A.C. 9:11-2.1 and (d)1 through 5 below) expected of EOF students.

(c) The campus EOF director must approve students in the cases established in (b) above, after review and recommendation by the financial aid office. The campus EOF director, in cooperation with the director of financial aid, shall have the discretion to use professional judgment to assess whether a family is historically and economically disadvantaged in determining an applicant's financial eligibility for admission to the EOF Program.

(d) Where there is evidence that strict adherence to the maximum income eligibility cut-offs will not serve the purpose of the EOF Program, the institution may submit a formal written request to the executive director for permission to admit students under a waiver pursuant to the provisions of this section. Students admitted under this provision must have incomes that do not exceed 175 percent of the official national poverty threshold as published annually by the Federal government adjusted to reflect New Jersey's cost of living and meet one of the following criteria:

1. The student attended high school in a district factor group a or b school district as certified by the New Jersey Department of Education;

2. The student has resided in a municipality defined as a "high distress" area. A high distress area, as defined by the New Jersey Office of Management and Budget, is one which, in comparison to the rest of the State, is characterized by old or sub-standard housing and/or low real estate value, low per capita income, high unemployment, population decline, and a high percentage of residents receiving welfare and other benefits targeted for low-income families;

3. The student has resided in an area of a municipality that is historically populated by low-income families; such an area is commonly known as a "pocket of poverty" as characterized by criteria outlined in (d)2 above;

4. The student has a sibling who was or is currently enrolled in an EOF Undergraduate Program; or

5. The student is or was eligible for government assistance and educational programs targeted toward low-income and disadvantaged populations (TRIO programs, free and reduced breakfast/lunch programs, food stamps) and was a first-generation college student.

(e) The student's record must contain sufficient documentation for verification of the criteria in (a) through (d) above. All efforts should be made to give priority to those students whose incomes are within the limits of N.J.A.C. 9:11-2.5.

(f) The annual gross income and assets of all graduate grant recipients who did not receive an undergraduate grant must be verified by the institution at the time of initial graduate enrollment through the use of Internal Revenue Service documents.

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(g) In those instances where earnings are not the source of income, files must contain appropriate documentation and verification at the time of initial enrollment on which to base awards (for example, statements from the Welfare department, Social Security administration, Veteran's administration or any other approved administrative agency).

9:11-2.6 Grant amounts

(a) The dollar amount of each EOF graduate grant will be based on three factors:

1. Full-time approved enrollment as defined by the institution offering the graduate program of study;

2. The financial need of the student; and

3. The type of institution which the student will be attending.

(b) The exact amount of the EOF award shall be determined by the institution's EOF and financial aid directors. Priority for determining need and awarding EOF graduate grants shall be given first to students who meet the educational and income criteria in accordance with N.J.A.C. 9:11-2.1(b) through (e), 2.2(a) and (b) and 2.5(a) followed by those students admitted using N.J.A.C. 9:11-2.5(b) through (e).

(c) Once it is determined that a student is eligible, he or she shall not receive less than the minimum grant nor more than the maximum grant. Under no circumstances shall an EOF award be granted which, in combination with other aid, exceeds the cost of attendance as determined by the institution.

(d) The EOF Board of Directors shall annually review the State grant amounts for EOF students and make adjustments if necessary. The minimum and maximum award ranges for full-time graduate EOF grants for each type of institution follows:

Graduate	Minimum	Maximum
State Colleges	$200.00	$2,000
Four Year Independent	200.00	2,500
Rutgers, NJIT	200.00	2,500
UMDNJ	200.00	4,000

(e) The minimum award, as set forth in this section, shall be granted to all eligible EOF graduate students.

(f) The awarding of all grants within the above stated minimum and maximum range shall be based upon a careful analysis of the student's total financial situation and financial need. The neediest students shall be accorded priority.

9:11-2.7 Duration of graduate student eligibility

(a) Students deemed eligible at the time of initial graduate enrollment shall retain eligibility for program support services throughout the duration of the initial graduate degree of study as long as he or she maintains full-time enrollment.

(b) In addition, students shall retain eligibility for an EOF graduate grant as long as the student has demonstrated financial need as determined by the institution through submission of a financial aid form approved by the EOF Board of Directors, in accordance with annually established deadline dates.

(c) No student shall be eligible for a graduate EOF grant for more than 10 semesters; however:

1. Length of eligibility at four-year public colleges, four-year independent colleges, Rutgers and NJIT shall be restricted to one semester beyond the normal number of semesters usually required for a full-time student to complete the degree requirements. For example:

Degree Requirements	Full-Time Graduate Student	Length of Eligibility
36 credits	9 credits	(36/9) = 4 + 1 = 5 semesters
84 credits	12 credits	(84/12) = 7 + 1 = 8 semesters

2. Length of eligibility in the pursuit of a medical or dental degree shall be restricted to one year beyond the normal number of years usually required for a full-time student to complete the degree requirements. In no case shall the maximum graduate eligibility exceed the equivalent of 10 semesters.

(d) Graduate grant recipients may pursue more than one advanced degree; however:

1. Each degree must be a higher level than the previous one; and

2. In no case shall the combined eligibility exceed the equivalent of 10 semesters.

(e) No EOF graduate grant is to be awarded for summer program study excepting those programs that, by nature, require that specific courses be taken during the summer.

1. Exceptions are possible in cases where the program of study requires a mandatory sequence of courses for more than two terms in an academic year.

2. In order to qualify for an exception, the institution must submit a request in writing to the *[DHE]* ***Commission***/EOF Office.

9:11-2.8 Operational provisions for graduate grants

(a) The EOF Board of Directors must approve each institution's initial request to establish an EOF graduate program. This written request is to be submitted on forms provided by the Executive Director of EOF. Requests must include information outlining the expected objectives to be achieved through participation in the EOF graduate program, the number of students estimated to be eligible, and administrative responsibilities.

(b) Any New Jersey institution of higher education is eligible to participate in the EOF graduate program as long as it is certified as a licensed, accredited public or independent, non-proprietary, graduate or professional school.

(c) Participating institutions are to submit an annual academic year request for student slots to the Executive Director of EOF.

(d) Notification of action on institutional requests from the Executive Director of EOF will be given in writing to the President of each institution.

(e) To apply for Article III, graduate student grant funds, the financial aid and EOF directors must complete a payment request form to be established prior to the academic year for which funds are being requested for graduate students.

(f) The institutions shall annually submit to the *[DHE]* ***Commission***/EOF Office an EOF graduate payment request information form for each student.

(g) A timetable for submission of reports and payment request forms shall be made available to each participating institution.

(h) All files of students receiving EOF graduate grants will be subject to a fiscal audit conducted by the *[Department of]* ***Commission on*** Higher Education.

9:11-2.9 Student notification and payment

(a) A student shall be notified in writing by the institution's financial aid officer of the content of his or her financial aid package. The institution's written notification to the student shall contain a clause absolving the State of any responsibility for funding in the event that the grant is based upon fraudulent, inaccurate, or misleading information.

(b) The EOF Board of Directors may elect to provide payment directly to institutions on behalf of student recipients. Payments will be made to institutions for the eligible students in equal installments over the regular academic year, with the number of installments corresponding to the number of school terms. Listings of eligible students to be credited will be provided to institutions.

9:11-2.10 Discontinuation of EOF graduate grants

(a) The Article III graduate grant is to be discontinued immediately when the student ceases to be eligible under any criteria listed in this subchapter.

(b) The Article III graduate grant is to be discontinued for any student who has been academically dismissed unless reinstated in good standing by institutional officials.

(c) The Article III graduate grant is to be discontinued for any student who is not matriculated in a full-time program of study or any student who is not enrolled. The amount of any grant paid to the institution for that student must be repaid by the institution.

(d) The Article III graduate grant is to be discontinued for any student who refuses to abide by regulations established by the institution for participation in the EOF Program.

(e) The Article III graduate grant is to be discontinued for any student who intentionally falsifies or gives misleading information

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upon which eligibility was based. The amount of any grant previously paid to that student must be repaid by that student.

9:11-2.11 Liability

(a) The basic responsibility for submitting accurate information to institutional officials rests with the student.

(b) In the event that an institution has knowingly conveyed fraudulent and/or misleading information in order to obtain EOF grants for ineligible students, the institution will be held liable and will be required to make restitution.

(c) In cases where institutions have made awards in good faith based upon fraudulent and/or misleading information which has been conveyed by the student, the student is liable for the return of the EOF grant. A written statement to this effect shall accompany each student's award notification.

(d) The EOF Executive Director, with the cooperation of institutional officials, shall undertake appropriate steps to reclaim monies due the Educational Opportunity Fund from ineligible students.

9:11-2.12 Grant usage

(a) The EOF graduate grant must be applied to the student's educational costs only. Educational costs are inclusive of whatever constitutes each institutional educational budget and may include tuition, fees, room and board, transportation, books, educational supplies and child care.

(b) Use of EOF graduate grants for any other costs is strictly prohibited.

9:11-2.13 Appeals

(a) A student or his or her parent(s) may file a written appeal with the EOF Executive Director regarding institutional decisions of ineligibility.

1. The first step in appealing EOF grant eligibility begins within the institution. As a campus-based program, the verification of EOF grant eligibility is the responsibility of institutional officials.

2. A student must have already appealed through institutional channels before his or her appeal will be heard by the EOF Executive Director.

3. The letter of appeal must furnish detailed information as to the nature of the case and contain the names of institutional officials who have been contacted.

(b) If, after State payment deadline dates, new information or evidence has been presented regarding previous institutional eligibility decisions, the institution may request consideration by the EOF Executive Director for payment in the same fiscal year. Such requests must be submitted before fiscal year end reconciliation and should be submitted through payment rosters co-endorsed by the EOF campus director and financial aid officer. The fiscal year ends on June 30th of each year.

(c) In no case should institutional requests for opinions, clarification, or consideration based on new evidence constitute an appeal for a student or students who have not met the minimum standards set forth in State regulations. These standards are intended to be the "floor" above which institutional standards and appeals may operate, but no appeals, institutional or central, should result in an EOF student not meeting these State minimum standards for eligibility.

9:11-2.14 Refunds and repayments of disbursements made to students

(a) If a refund is due to a student under the institutions's refund policy and the student received State financial aid under any State student financial assistance program, the institution shall multiply the institutional refund by the following fraction to determine the amount to be refunded to the Treasurer, State of New Jersey through the Office of Student Assistance:

$$\frac{\text{Amount of State financial assistance (minus work earnings) awarded for the payment period}}{\text{Total amount of financial aid (minus work earnings) awarded for the payment period}}$$

(b) The payment period is the time between the first day of classes for an academic term and the end of that term according to the institutional calendar.

(c) The refund period is the time between the first day of classes for an academic term and the date the student officially or unofficially withdraws from an institution, is expelled by an institution, or reduces his/her academic course load such that he/she is no longer eligible for State assistance.

(d) The formula at (a) above should be applied if a full-time student reduces his/her academic course load to less than full-time, prior to the end of the institutional refund period. However, if the student reduces his/her academic course load to less than full-time or reduces the number of credits for which the student is enrolled on less than a full-time basis after the end of the institutional refund period, a refund to the State is not necessarily required.

(e) If a combination of State student funds has been packaged for the student and a refund is due the State, a prorated amount is applied to each of the State programs in the student's financial assistance package.

(f) If a cash disbursement has been made by an institution for non-institutional costs from a State assistance program, and it is determined by application of the institution's refund policy and the formula in (a) that a refund should be paid to the State, the institution shall endeavor to collect the overpayment from the student and return it to the State. If this effort is unsuccessful, the institution shall notify the *[Department of]* ***Commission on*** Higher Education of the amount owed for each State financial assistance program. Non-institutional costs may include, but are not limited to, room and board, books and supplies, transportation, child care, and miscellaneous expenses.

(g) If a student utilizes any portion of a full-time award, it will be treated the same as a full semester payment in calculating the number of semesters of eligibility. Thus, the institution shall afford the student the opportunity to decline and repay the State award for that payment period.

SUBCHAPTER 3. C. CLYDE FERGUSON LAW SCHOLARSHIP

9:11-3.1 Student eligibility

(a) To be eligible for a C. Clyde Ferguson Law Scholarship (Ferguson Scholarship), a student shall demonstrate that he or she:

1. Is or has been a legal resident of the State of New Jersey for at least one year immediately prior to receiving the scholarship;

2. Is a student who meets the requirements of N.J.A.C. 9:11-2.5 or falls within one of the following categories:

i. A minority or disadvantaged student who is traditionally underrepresented in the law profession and has demonstrated financial needs;

ii. A former or current recipient of the New Jersey EOF undergraduate and/or graduate grant; or

iii. A student who would have been eligible as an undergraduate for a New Jersey EOF; and

3. Is or will be a full-time student enrolled in the Minority Student Program at Rutgers, The State University School of Law-Newark, Rutgers, and enrolled in Rutgers, The State University School of Law-Camden, or Seton Hall University School of Law. Students shall be in a post-baccalaureate program of study leading toward an initial law degree.

9:11-3.2 Grant amounts

(a) The maximum and minimum award ranges for a Ferguson Scholarship shall be annually established by the Board of Directors of the New Jersey Educational Opportunity Fund but shall not exceed the maximum amount of tuition, fees, room and board charged at Rutgers University School of Law-Newark.

(b) The amount of each Ferguson Scholarship shall be based on the financial need of the student as determined pursuant to N.J.A.C. 9:11-2.6(a), (b) and (c).

9:11-3.3 Rules incorporated by reference

The following provisions of N.J.A.C. 9:11-2 governing the EOF graduate program shall also apply to grants made under the C. Clyde

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Ferguson Law Scholarship program unless they are inconsistent with, or otherwise excepted within, the provisions of this subchapter: N.J.A.C. 9:11-2.3, 2.4, 2.7, 2.8, 2.9, 2.11, 2.12, 2.13, and 2.14.

SUBCHAPTER 4. MARTIN LUTHER KING PHYSICIAN-DENTIST SCHOLARSHIP PROGRAM

9:11-4.1 Student eligibility

(a) To be eligible for a Martin Luther King Physician-Dentist Scholarship (King Scholarship), a student must have demonstrated that he or she:

1. Is or has been a legal resident of the State of New Jersey for at least two years immediately prior to receiving the scholarship, and;

2. Is a student who meets the requirements of N.J.A.C. 9:11-2.5 and falls within one of the following categories:

i. A minority student included in one of the ethnic groups recognized by the Association of American Medical Colleges or the American Association of Dental Schools as underrepresented in the medical or dental professions; or

ii. A former or current recipient of the New Jersey EOF undergraduate and/or graduate grant; or

iii. A student who would have been eligible as an undergraduate for a New Jersey EOF; and

3. Is or will be a full-time student enrolled in a post-baccalaureate program of study leading toward an initial M.D., D.O., or D.M.D. degree at the University of Medicine and Dentistry of New Jersey.

(b) Priority shall be given to those students who meet the criteria of (a)2i and ii, or (a)2 i and iii as set forth above.

9:11-4.2 Grant amounts

(a) The maximum and minimum award ranges for a King Scholarship shall be annually established by the Board of Directors of the New Jersey Educational Opportunity Fund but shall not exceed the maximum amount of tuition charged at the University of Medicine and Dentistry of New Jersey.

(b) The amount of each King Scholarship shall be based on the financial need of the student as determined pursuant to N.J.A.C. 9:11-2.6(a), (b), and (c).

9:11-4.3 Rules incorporated by reference

The following provisions of N.J.A.C. 9:11-2 governing the EOF graduate program shall also apply to grants made under the Martin Luther King Physician-Dentist Scholarship program unless they are inconsistent with, or otherwise excepted within the provisions of this subchapter: N.J.A.C. 9:11-2.3, 2.4, 2.7, 2.8, 2.9, 2.11, 2.12, 2.13 and 2.14.

HUMAN SERVICES

(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Management and Governing Body Standards

Adopted New Rules: N.J.A.C. 10:37D

Adopted Repeals: N.J.A.C. 10:37-6.1 through 6.4, 6.8, 6.9, 6.25, 6.26, 6.30 through 6.33, 6.37, 6.38, 6.58 and 7.1 through 7.9

Proposed: March 21, 1994 at 26 N.J.R. 1277(a).

Adopted: August 15, 1994 by William Waldman, Commissioner, Department of Human Services.

Filed: August 16, 1994 as R.1994 d.464, **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. 30:9A-10.

Effective Date: September 6, 1994.

Expiration Date: September 6, 1999, N.J.A.C. 10:37D.

Summary of Agency-Initiated Change:

In response to internal agency comment that the provision at N.J.A.C. 10:37D-3.6(b) requiring governing board evaluation of the performance of the Chief Executive Officer "periodically" establishes an unacceptably vague standard, the Department has deleted the word "periodically" upon adoption and substituted the phrase "biannually." In addition to eliminating vagueness from the proposal, the Department notes that the provision continues to allow complete governing board discretion regarding the nature of the evaluation, which serves to counterbalance the greater specificity in the adoption regarding its frequency.

Summary of Public Comments and Agency Responses:

The Department received public comments from the Center for Non-Profit Corporations (CNPC), the New Jersey Association of Children's Residential Facilities (NJACRF), the Warren County Department of Human Services (WCDHS), the Mental Health Association in Passaic County (MHAPC), and Kennedy Memorial Hospitals/University Medical Center—Cherry Hill Division (KMH). Their comments and the Department's responses are provided below.

COMMENT: KMH commented that N.J.A.C. 10:37D-2.13(a)1 should be amended to indicate that psychiatrists who are Board certified or Board eligible by the American Osteopathic Board of Neurology and Psychiatry are also appropriate to assume responsibility for clinical services provided by provider agencies, in addition to psychiatrists who are Board certified or Board eligible by the American Board of Psychiatry, as required by the proposal.

RESPONSE: The Department agrees and never intended to exclude any authorized licensing body for psychiatrists. The text at N.J.A.C. 10:37D-2.13(a)1 has been amended accordingly.

COMMENT: MHAPC commented that although it supports the principle underlying N.J.A.C. 10:37D-2.3(a)3, a crippling hardship could be created for small agencies in multi-ethnic areas if they had to provide services in all languages as proposed.

RESPONSE: While the Department does not intend to impose a crippling hardship for small agencies in multi-ethnic areas, it is considered nonetheless essential that mental health services be linguistically accessible to the clients for whom such services are offered. Towards that end, specific approaches are not prescribed by the rule and expected to take a variety of forms depending upon the individual agency's circumstances, the populations for whom services are provided, and available resources.

COMMENT: WCDHS commented that the standard articulated at N.J.A.C. 10:37D-2.3(a)4 is vague and may compromise the principle that services should be available to clients regardless of their income.

RESPONSE: The Department agrees and never intended to compromise the principle that services should be available to clients regardless of their income. To clarify that point, the following language has been added to N.J.A.C. 10:37D-2.3(a)5 in the proposal: "... and inability to pay for services shall not preclude the receipt of services." N.J.A.C. 10:37D-2.3(a)4 has been deleted from the proposal because the clarifying language now renders it unnecessary.

COMMENT: NJACRF and CNPC commented that separate Divisions within the Department have different and perhaps inconsistent standards on management and governing body issues and that some provider agencies have contracts with more than one Division. To prevent the resulting confusion, NJACRF recommended that the proposal be withdrawn and the Department establish uniform management and governing body standards for all agencies contracting with its various Divisions. CNPC recommended that the proposal be withdrawn and the matter be subject to the well-established standards of "watchdog" agencies rather than Divisional regulation.

RESPONSE: While the Department believes that the provisions relating to management and governing body policies currently contained in the various Divisions' rules and manuals are not contradictory, it agrees that the differing mandates of each Division may, in the future, pose such a potential. Therefore, language has been added at N.J.A.C. 10:37D-1.1(a) specifying that, in the event of a contradiction, the applicable provision of the cognizant Division, determined in accordance with N.J.A.C. 10:3-4, shall prevail. The standards of so-called watchdog agencies, although clearly useful in many situations, are recognized as voluntary to those organizations who wish to follow them and usually fail to recognize all of the unique circumstances believed important to assure provision of specialized mental health services by qualified organizations. As such, standards of watchdog agencies suggested by the commenter are not considered sufficiently tailored to the issues involved in the delivery of mental health services to Department target populations.

COMMENT: NJACRF and CNPC commented that the proposal seems contrary to the Department's Contract Task Force in that it is unnecessarily intrusive and overly specific. CNPC specifically cited board

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composition, personnel practices and staff communications requirements as examples.

RESPONSE: The Department disagrees. The purpose of the Departmental Contract Task Force is primarily to improve the method utilized by the Department to purchase services for its clients. The purpose of these rules is to establish minimum standards for provider agencies to be considered eligible for contracted funding by the Division.

Also, the proposed rules are revisions of longstanding existing rules on the same subject, and should be viewed in that context. As such, the Department considers them to be less prescriptive and intrusive than their predecessors.

COMMENT: NJACRF commented that the proposal would impose additional costs for reporting and recordkeeping which would divert precious resources from direct client services.

RESPONSE: The Department did not intend to impose additional costs upon provider agencies and disagrees that this proposal does so. The commenter gave no specific examples of greater costs which would be incurred by complying with the proposed rules, and, after comparing these proposed rules to the existing more prescriptive rules which they will replace, is unaware how the proposal would do so.

COMMENT: CNPC and MHAPC commented that many of the rules in the proposal generally either duplicate existing laws, regulations or standard professional practices, such as independent certified audits, or are merely good basic management practice, and as such are unnecessary.

RESPONSE: The Department disagrees. Existing laws, regulations and standard practices generally were not designed or intended to meet the specific needs related to the effective and efficient management of mental health provider agencies. In the cases where other existing laws and regulations address the specific needs of mental health provider agencies, reference to those existing laws and regulations are provided in these proposed rules for the convenience of both providers and the Department. The Department believes there is value to this convenient reference to additional applicable requirements in these more specific rules regarding the provision of State funded mental health services.

Even if to some extent the proposed rules codify good basic management practice, the Department believes it is a sound policy to require that such practice be the established norm to receive public funding.

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

CHAPTER 37D
MANAGEMENT AND GOVERNING BODY STANDARDS

SUBCHAPTER 1. GENERAL PROVISIONS

10:37D-1.1 Scope and purpose

(a) These rules shall apply to all provider agencies (PA) funded by the Division of Mental Health and Hospitals (Division). ***In the event any of these rules may conflict with the rules of another division of the Department, the rules of the cognizant Division, as determined in accordance with N.J.A.C. 10:3-4, shall apply.***

(b) These rules are designed to promote client centered services which provide high quality, accessible and innovative treatment. These rules are also designed to promote creativity and responsiveness to client and staff needs, and goal directed services.

10:37D-1.2 Definitions

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

"Department" means the Department of Human Services.

"Division" means the Division of Mental Health and Hospitals.

"Provider agency (PA)" means an agency contracted with, or funded by, the Division to provide specific direct mental health services to clients.

SUBCHAPTER 2. MANAGEMENT STANDARDS

10:37D-2.1 Table of organization

(a) Each PA shall have a written table of organization.

1. The table of organization shall clearly delineate staff accountability and the chain of command of the PA.

2. The table of organization shall be revised within 90 days of any major change in the agency organizational structure.

3. The table of organization shall be approved by the governing board.

10:37D-2.2 Policies and procedures

(a) Each PA shall develop policies and procedures to adequately guide PA operations to meet organizational, fiscal, programmatic and management objectives.

1. Each PA shall ensure that agency policies and procedures are written, distributed to staff and clients, when relevant, and consistently enforced and monitored.

2. Clients shall be provided the opportunity to recommend and evaluate PA policies and procedures that impact the services they receive.

3. Each PA shall review all policies and procedures annually, and revise as necessary. The annual reviews shall be documented.

10:37D-2.3 Service accessibility

(a) Each PA shall make services accessible to clients.

1. Mental health services shall be available at times and locations which provide all clients access to the services.

2. All services shall be accessible to physically handicapped individuals.

3. Through careful attention to ethnic, racial, primary language, and other characteristics, the PA shall assure that services provided to clients are culturally sensitive, culturally competent and in a language sufficiently well understood by the client to assure comprehension.

[4. Financial or economic barriers to the receipt of services shall be minimized.]

*[5.]***4.*** Each PA shall provide a written sliding fee scale for clients based on their ability to pay***, and inability to pay for services shall not preclude the receipt of services***.

10:37D-2.4 Staff communications

(a) There shall be documentation that managers provide staff with the information they need to effectively perform the functions of their assigned tasks.

1. Methods for communicating information may include staff meetings, written memoranda and supervisory meetings. Documentation that such communication exists may include evidence of staff and supervisory meetings and informational memoranda.

10:37D-2.5 Environment

(a) Each PA shall maintain a clean and safe environment which promote dignity and self respect for staff and clients.

1. The physical plant shall be regularly cleaned and inspected for possible life safety deficiencies.

2. There shall be sufficient space allocated for the programs and activities provided.

3. There shall be sufficient space to allow for privacy for individual, group or family sessions.

10:37D-2.6 Quality assurance

(a) Managers in each PA shall participate in and support their quality assurance program.

1. There shall be documented evidence that information resulting from the quality assurance process is reviewed and used by management to promote and enhance the mission, goals and objectives of the organization.

2. There shall be evidence that management provides input into the agency's quality assurance process as required at N.J.A.C. 10:37-9.

10:37D-2.7 Management information system

(a) Each PA shall develop a computerized or manual management information system which provides information to support the goals and objectives of the organization and the provision of high quality client-centered services.

1. The management information system may include, but need not be limited to, data on admissions, diagnoses, wait for service, referral sources, discharges, dropouts, readmissions, incidents, direct service staff activities, staff caseloads, frequency of services, and types of service modalities.

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2. The information collected shall be used by management to assess accessibility of services and appropriateness of staffing, and to assist in management decision-making.

3. The PA's management information system shall be able to generate all routine system-wide contract and client registry data required by the Division.

4. Client information that is contained in the management information system shall be safeguarded to protect confidentiality.

10:37D-2.8 Coordination of services

(a) Each PA shall develop methods to coordinate services between providers who serve mutual clients to ensure continuity of care.

1. Procedures to coordinate services shall ensure that clients' treatment goals and objectives are consistently reinforced and that the services provided are complementary.

10:37D-2.9 Financial procedures

(a) Each PA shall have a system of financial internal controls to protect organizational assets and promote the goals and objectives of the organization.

(b) The system of financial internal controls shall provide reasonable assurance that:

1. Obligations and costs are in compliance with applicable laws;

2. Funds, property and other assets are safeguarded against waste, loss, unauthorized use and misappropriation;

3. All financial transactions applicable to agency operations are properly recorded and accounted for so that financial and statistical reports and accountability over the assets can be maintained and can be prepared; and

4. There is a system of checks and balances related to specific financial routine procedures and a careful separation of functions and responsibilities in authorizing, processing, recording and reviewing transactions.

(c) Each PA's financial procedures shall include, but need not be limited to, the following:

1. Well-maintained accounting records in accordance with generally accepted accounting principles; such records shall include, but not necessarily be limited to, general ledger, cash receipts and cash disbursement journals, accounts receivable and accounts payable journals, payroll register, and inventory records;

2. Up-to-date records related to client attendance and determination of client fees;

3. A methodology for monitoring the accuracy of budget projections compared to actual costs, at least on a quarterly basis; and

4. The reports to the governing board of current financial status information, at least on a quarterly basis.

(d) Each PA's written policies and procedures shall adhere to the contract accounting and reporting requirements contained in N.J.A.C. 10:3.

10:37D-2.10 Personnel manual

(a) Each PA shall have a personnel policies and procedures manual which is approved by the governing board and describes the practices of the PA.

(b) There shall be documentation that the governing board has approved the personnel manual and all subsequent revisions.

(c) The personnel manual shall include, but need not be limited to, the following policies: staff benefits, work hours, sick leaves, leave of absence, on the job injuries, grievances, employee discipline, code of ethics, outside employment, reporting losses, thefts or vandalisms, retirement assistance, employee evaluations, and conflict of interest.

(d) There shall be written job descriptions for every employee position which includes staff responsibilities, minimum qualifications and reporting relationships.

10:37D-2.11 Personnel files

(a) Each PA shall maintain personnel files for all staff and volunteers.

1. Personnel files shall include applications and resumes with pertinent identifying data; a copy of employee contracts when applicable; copies and verifications of professional credentials as appropriate; performance evaluations; and current job descriptions.

10:37D-2.12 Verification of staff credentials

(a) Each PA shall have written policies and procedures to ensure the verification of staff credentials and employment references.

1. Credentials shall be verified either: by viewing the original licenses or degrees of professional staff; a sign-off sheet by the personnel officer or appropriate staff; or documentation of written or telephone contact with the organization that granted the degree; or license.

2. Previous employment shall be verified by documentation of written or telephone contact with an employee's previous employers.

3. There shall be documentation that licenses are verified each year to ensure that they are valid.

10:37D-2.13 Qualification of clinical staff

(a) Each PA shall hire clinical staff who are appropriately licensed, certified or *[trianed]* ***trained*** in order to be able to assume responsibility for the clinical services provided by the PA.

1. The PA governing board shall formally adopt policies and procedures to ensure that psychiatrists are Board certified or Board eligible by the American Board of Psychiatry ***or the American Osteopathic Board of Neurology and Psychiatry***.

2. The PA shall ensure that only appropriately licensed personnel shall provide services for which a license is required.

10:37D-2.14 Training

(a) Each PA shall orient, train, supervise and evaluate employees.

1. There shall be an orientation to assist staff to adequately perform their job responsibilities at the onset of their employment.

2. There shall be documented ongoing training provided to staff on pertinent topics.

3. Cultural sensitivity shall be included in staff orientation and training programs.

4. There shall be regularly scheduled staff meetings or supervisory conferences.

5. There shall be at least an annual performance evaluation of all staff.

6. There shall be procedures to supervise the work of student interns and volunteers.

10:37D-2.15 Conflict of interest

(a) Each PA shall have a policy addressing conflict of interest issues.

1. The policy shall prohibit PA staff from personal, financial, professional or political gain at the expense of the PA's or clients' interest.

2. The policy shall comply with any current Department conflict of interest rules contained in N.J.A.C. 10:3-1.14.

10:37D-2.16 Non-discrimination

(a) Each PA shall have a policy that prohibits discrimination against applicants for employment or services and against any employee or recipient of service, because of race, color, creed, religion, ethnic background, national origin, marital status, handicap, age or gender. The policy shall comply with all Federal and State statutes as well as any current Department non-discrimination policy.

10:37D-2.17 Affirmative action and equal employment opportunity

Each PA shall have policies and procedures that address Affirmative Action pursuant to the Civil Rights Act of 1964, Executive Order No. 61, N.J.A.C. 17:27, N.J.S.A. 10:5-31 et seq. and P.L. 1975, c.127, and Equal Employment Opportunity pursuant to N.J.S.A. 11A:7-1 et seq. The policies shall adhere to all Federal and State statutes and any current Department policies.

10:37D-2.18 Client confidentiality, rights and grievances

(a) Each PA shall have policies and procedures to address client confidentiality, rights and grievances.

1. The policy to safeguard clients' confidentiality shall comply with N.J.S.A. 30:4-24.3 on confidentiality, any current Department policies on access to records and N.J.A.C. 10:37-6.79, Confidentiality of records.

2. The policy to address clients' rights shall comply with N.J.A.C. 10:37-4.5, Clients rights.

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3. The clients' grievance procedure shall comply with N.J.A.C. 10:37-4.6, Client complaint agency ombuds procedure.

4. Policies on client confidentiality, rights and grievances shall comply with all related Federal and State statutes, and any current Department rules.

SUBCHAPTER 3. GOVERNING BODY STANDARDS

10:37D-3.1 Governing board; general duties and composition

(a) Each PA shall have a governing board which may establish advisory boards or committees to ensure that the PA's programs are responsive to the consumers in the communities served by the PA.

1. Priority for membership shall be given to individuals who reside, work, and/or receive services in the service area, or are former recipients of services, or have family member(s) who receive services from the PA.

2. Each PA shall document "good faith" efforts to recruit current or former recipients of services from a mental health program, or family members or guardians of such recipients for board membership.

3. Governing boards and advisory boards shall generally reflect the age, race and gender demographics of the service area.

4. To promote diversity, advisory boards shall be composed of individuals with varied expertise.

5. The majority of the governing and advisory board members shall not be providers of health care.

6. There shall be documentation that all advisory boards offer recommendations to the governing board for their consideration.

10:37D-3.2 Governing board; financial responsibility

(a) Each PA's governing board shall assume fiduciary responsibility for the financial management of the PA.

1. The governing board shall authorize, approve and adopt the PA's annual budget.

2. The governing board shall approve all capital projects.

3. The governing board shall review and approve the PA's annual audits performed by an independent public accountant.

4. Each governing board shall formally designate a member to certify financial statements by signature.

5. The governing board shall monitor expenditure reports on at least a quarterly basis to ensure the PA's financial solvency.

10:37D-3.3 By-laws

(a) Each governing board shall establish by-laws that define its roles and functions.

1. The by-laws shall describe the powers and duties of the governing board, its officers and committees.

2. The by-laws shall state the criteria and method of selecting members.

3. The by-laws shall state the number of members necessary for a quorum and the rules for meetings, including frequency of meetings.

4. The by-laws shall describe the authority and responsibilities of the Chief Executive Officer including his or her reporting responsibilities to the board.

5. The by-laws shall be reviewed at least every two years and revised as necessary. The board president or chair shall sign and date the by-laws to indicate the time of review or revision.

6. The by-laws shall conform to the requirements of N.J.S.A. 15A:2-10.

10:37D-3.4 Conflict of interest

Each governing board shall develop a conflict of interest and disclosure policy which conforms with Department rules at N.J.A.C. 10:3-1.14.

10:37D-3.5 Meetings; schedule and minutes

(a) Each governing board and its advisory boards shall meet on a regular basis as described in its by-laws.

1. The governing board and its advisory boards shall meet with sufficient frequency to carry out the functions described in this document but in no case less frequently than quarterly.

2. Minutes of meetings shall be maintained, including resolutions and motions pertaining to the fiscal and legal responsibilities of the board.

10:37D-3.6 Functions of the board

(a) The executive and management functions of the governing board shall include, at a minimum, establishing and approving general policies for the fiscal and programmatic operation of the agency, to ensure consistency with the agency's mission and goals.

(b) The governing board shall appoint the Chief Executive Officer and evaluate his or her performance *[periodically]* ***biannually***.

(c) The governing board shall review and approve plans to establish new programs or to substantially alter or discontinue existing programs, substantial changes in levels of service, and changes in populations served.

10:37D-3.7 Reports to the board

(a) Each PA shall submit written reports summarizing the PA's activities and status to the governing board.

1. The governing board shall determine the nature and frequency of these reports, with input from the Chief Executive Officer.

2. The frequency and content of these reports shall provide the governing board sufficient information to meet its legal and fiscal responsibilities.

3. The PA shall provide summaries of Quality Assurance findings to the governing board.

10:37D-3.8 Department access to records

Each governing board shall conform to any current Department rules regarding access to PA records.

(a)

DIVISION OF FAMILY DEVELOPMENT

Public Assistance Manual

Assignment of Right to Support; Wage Withholding

Adopted New Rule: N.J.A.C. 10:81-11.18A

Adopted Amendments: N.J.A.C. 10:81-11.2 and 11.4

Proposed: February 22, 1994 at 26 N.J.R. 896(a).

Adopted: August 15, 1994 by William Waldman, Commissioner, Department of Human Services.

Filed: August 16, 1994 as R.1994 d.463, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 44:10-3; 45 C.F.R. 303.31, 303.33, and 303.100; 42 C.F.R. 43.146 and Section 671(a)17 of the Social Security Act.

Effective Date: September 6, 1994.

Expiration Date: July 25, 1999.

Summary of Public Comments and Agency Responses:

Comments were received from the Sussex Welfare Agency, the Ocean County Board of Social Services and the Administrative Office of the Courts. Their comments and the Department's responses are as follows:

COMMENT: Clarification was requested concerning N.J.A.C. 10:81-11.4 with respect to the categories of Medicaid cases to which the IV-D agency is required to provide child support services. Federal regulations at 42 C.F.R. 433.160, approved June 7, 1993, discuss the development of criteria, procedures and methodology for identifying Medicaid cases that would be appropriate for referral to IV-D and places these determinations on the State Medicaid and IV-D agencies.

RESPONSE: Although the Medicaid agency must confer with the IV-D agency when developing the criteria, procedures and methodology for identifying cases to be referred for child support action, in compliance with Federal requirements, it is the responsibility of the Medicaid agency to determine which cases need IV-D services. It is the responsibility of the IV-D agency to provide the appropriate services to all cases referred by Medicaid.

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Federal regulations at 42 C.F.R. 433.146 mandate that the Medicaid agency must require the applicant to assign to the State his or her rights to medical support and the rights of other eligible individuals under the plan, with the exception provided for regarding Medicare benefits. Therefore, both those who are receiving Medicaid after termination of AFDC and other eligibility groups, which have an assignment under 42 C.F.R. 433.146, are eligible for IV-D services as non-AFDC Medicaid recipients. This includes, but is not limited to, New Jersey Care and Medically Needy. Text has been added at N.J.A.C. 10:81-11.4(g) to clarify this issue.

COMMENT: Clarification was requested concerning N.J.A.C. 10:81-11.4(e) which states that upon signing an application for AFDC or AFDC/Medicaid Only, the client assigns the county welfare agency (CWA) any rights to past due support. The proposed new amendment may cause confusion as in AFDC/Medicaid Only cases, the assignment of rights only pertains to medical support.

RESPONSE: It should be noted that the preceding subsection at N.J.A.C. 10:81-11.4(d) already stipulates that AFDC/Medicaid Only applicants will assign only their rights to medical support. But since there is the possibility that the reading of N.J.A.C. 10:81-11.4(e) on its own may cause some confusion, the Department has amended N.J.A.C. 10:81-11.4(e) to clarify that AFDC/Medicaid Only applicants assign only their rights to medical support (as indicated at N.J.A.C. 10:81-11.4(d)).

COMMENT: The new rule at N.J.A.C. 10:81-11.18A concerning wage withholding should follow N.J.S.A. 2A:17-56 inasmuch as that statute contains detailed provisions on the issue of wage withholding.

RESPONSE: N.J.A.C. 10:81 provides procedures for the CWAs. The new section on income withholding was proposed because if there is an assignment of rights in a case, the CWA would be an interested party and may also become party to an alternative arrangement.

The language used in the proposed new rule at N.J.A.C. 10:81-11.18A mirrors Federal regulation and sets forth requirements equivalent to N.J.S.A. 2A:17-56 regarding income withholding and how it applies to a CWA. A change in language providing for the detailed provisions of income withholding, as suggested by commenter, would set forth the income withholding procedures of the probation department, which are not pertinent to N.J.A.C. 10:81. In addition, such a modification would constitute a substantial change, requiring a new proposal. Therefore, the Department has determined that the proposed new rule does not require modification as requested by commenter.

COMMENT: At N.J.A.C. 10:81-11.18A, the more expansive term "income" should be used rather than "wages" when referring to withholding. Federal regulations at 45 C.F.R. 303.100(a)(9) provide that states may extend withholding to include withholding from forms of income other than wages.

RESPONSE: The Department agrees with the commenter and, where appropriate, the term "wage" has been replaced with "income" in accordance with 45 C.F.R. 303.100(a)(9).

COMMENT: There is an inconsistency between text at N.J.A.C. 10:81-11.18A(a) which states that the wages of an absent parent will be subject to withholding regardless of whether support payments by such parent are in arrears and text at N.J.A.C. 10:81-11.18A(a)1 which stipulates that proof of timely payment of previously ordered support may be used to constitute good cause not to require income withholding.

RESPONSE: The Department disagrees with the commenter that there is an inconsistency in text. In compliance with Federal regulation at 45 C.F.R. 303.100(b)(2), the proposed provision at N.J.A.C. 10:81-11.18A(a)1 specifies that along with giving the court a valid reason for not requiring an income withholding, a record of timely payment is also required. Good cause would not be granted solely on the basis that the absent parent has no arrears. For purposes of clarity, N.J.A.C. 10:81-11.18A(a)1 has been modified to state that both criteria must be met in order to make a determination of good cause.

COMMENT: At N.J.A.C. 10:81-11.18A(a)1, the phrase "court of administrative authority" needs to be defined.

RESPONSE: The phrase "court of administrative authority" contains a typographical error. The correct language that should have appeared here is "court or administrative authority". The correction has been made to the aforementioned paragraph.

COMMENT: N.J.A.C. 10:81-11.18A(a)2 appears to be confusing and may be missing some language. Commenter suggested that the paragraph be modified as follows:

"A written agreement is reached between the absent parent and custodial parent which provides for an alternative arrangement. If there is an assignment of rights to the State, the State must also be a party to the written agreement."

RESPONSE: The Department agrees with the commenter and the paragraph has been modified as suggested, with the exception that for clarification purposes, the term "State" has been replaced with "CWA."

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

10:81-11.2 Eligibility requirements

(a) In addition to the eligibility requirements contained in N.J.A.C. 10:81-11.3 and 5, requirements for AFDC eligibility shall include the following:

1. (No change.)

2. Assignment of support rights: AFDC-C and F applications or recipients as a condition of eligibility automatically assign to the county welfare agency all rights to support from the children's absent parent(s) or any other person to which the eligible children, or the applicant when he or she is included in the eligible unit, may be entitled (see N.J.A.C. 10:81-11.4). An assignment of rights is also required from DYFS cases under Section 471(a)17 of the Social Security Act and as a condition of Medicaid under 42 C.F.R. 433.146.

3. (No change.)

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

10:81-11.4 Assignment of support rights

(a) The IV-D agency is required to provide IV-D services to families which have assigned their rights to support under AFDC (45 C.F.R. 232.11), DYFS (Section 471(a)17 of the Social Security Act) or as a condition of receipt of Medicaid (42 C.F.R. 433.146), without an application or application fee.

Renumber (a) through (b) as (b) through (c) (No change in text.)

(d) Applicability: The assignment of supports rights applies to the AFDC and DYFS programs. AFDC/Medicaid Only applicants will assign only their rights to medical support. It is not an eligibility requirement for the Refugee Resettlement Program.

(e) IM worker's responsibility: The IM worker shall advise the AFDC client that upon signing an application (PA-1J) for AFDC or AFDC/Medicaid Only, he or she assigns to the county welfare agency any rights to past due support and future support ***when applying for AFDC and when applying for AFDC/Medicaid, he or she assigns any rights to past due or future medical support*** and subsequent to its completion, he or she shall be responsible for informing the county welfare agency of any payments which may be received either directly or through the probation department from an absent parent. Additionally, the AFDC client shall be informed of his or her cooperation responsibilities (see N.J.A.C. 10:81-11.5).

1. Referral to CWA/IV-D Unit: The IM worker, at the time of application for AFDC-C or Medicaid Only, shall complete the appropiate parts of the IV-D referral document and route this form to the CWA/IV-D Unit within two working days of issuance of an assistance check, or determination of eligibility, but no later than 45 days of initial application. Information describing available IV-D services and the individual's rights and responsibilities must be provided to all applicants within five working days of the IV-D referral.

i.-iv. (No change.)

v. Continuing IV-D services for families that lose AFDC, DYFS or Medicaid eligibility: Whenever a family is no longer eligible for assistance under the AFDC, DYFS or Medicaid programs, the IV-D agency must notify the family within five working days of the notification of ineligibility, that IV-D services will be continued unless the IV-D agency is notified by the family that IV-D services are no longer desired. The IV-D agency is required to pay all amounts collected representing support to the family. An IV-D agency may not recover costs from either parent.

(1)-(2) (No change.)

(f) It is the responsibility of the Division of Youth and Family Services to refer DYFS cases, which include IV-E and non-IV-E cases, to the CWA/IV-D Unit.

***(g) Those cases in which there is an assignment under 42 C.F.R. 433.146 include, but are not limited to, Medicaid Only, Medically**

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Needy and New Jersey Care. The Medicaid agency will determine which Medicaid recipients need child support services and refer those cases to the appropriate county CWA/CSP unit.*

10:81-11.18A *[Wage]* ***Income*** withholding

(a) In the case of a child support order that is issued or modified after November 1, 1990, the *[wages]* ***income*** of an absent parent shall be subject to withholding, regardless of whether support payments by such a parent are in arrears, unless the following conditions exist:

1. Either the absent parent or the custodial parent demonstrates, and the court *[of]* ***or*** administrative authority finds, that there is good cause not to require immediate income withholding. Good cause must be based on ***both***:

i. A written determination why immediate income withholding would not be in the best interests of the child*[.]***; and***

ii. Proof of timely payment of previously ordered support.

2. A written agreement is reached between the absent parent and custodial parent*[; and, the State, in IV-D cases in]* which ***provides for an alternative agreement. If*** there is an assignment of support rights to the *[State provides for an alternative arrangement]* ***CWA, the CWA must also be a party to the written agreement***.

(b) In cases of *[wages]* ***income*** not subject to immediate withholding, the *[wages]* ***income*** of the absent parent will be subject to withholding on the date the absent parent fails to make support payments at least equal to the support payable for 14 calendar days.

INSURANCE

(a)

DIVISION OF LICENSING AND ENFORCEMENT

Insurance Producer Licensing Professional Qualifications

Adopted Amendments: N.J.A.C. 11:17-3 and 5.7

Adopted Repeals: N.J.A.C. 11:17-5.1 through 5.4 and 5.6

Proposed: March 21, 1994 at 26 N.J.R. 1289(a).

Adopted: July 25, 1994 by Andrew J. Karpinski, Commissioner, Department of Insurance.

Filed: July 25, 1994 as R.1994 d.438, **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), 17:22A-1 et seq., 17:22A-4(c) and 24, and 17:33-2.

Effective Date: September 6, 1994.

Expiration Date: April 15, 1998.

Summary of Public Comments and Agency Responses:

Comments were received from:
The Acacia Group
American School of Business Inc.
Atlantic School of Insurance
Colorado Bankers Life Insurance
Educational Centers
Financial Supermarkets
Independent Insurance Agents of New Jersey
International School of Commerce
Kovats Real Estate, Insurance and Appraising Schools
Massachusetts Mutual Life Insurance Company
McCormick Financial Products
New Jersey Manufacturers Insurance Company
Professional Insurance Agents of New Jersey
The Professional School of Business
The Prudential
Society of Certified Insurance Counselors
South Jersey Professional School of Business
Summit Financial Resources, Inc.
Watlington Insurance Associates

COMMENT: N.J.A.C. 11:17-3.1(b)3. The responsibility for the school program complying with the regulations belongs first with the school which should be held fully responsible for any of the activities of the program. A signed statement should be required from each director stating that he or she has read this subchapter and understands his or her responsibility as a director and that **the school** will be held fully responsible for the activities of the program.

RESPONSE: Both the school and the director must be held responsible for the activities of the program. This situation is analogous to granting an insurance producer license to an organization. In that instance, all licensed partners, officers and directors, and all owners with an ownership interest of five percent or more in the organization are responsible for the conduct of the insurance business activity of the licensed organization. N.J.S.A. 17:22A-8b. In the school program context, if a school director fails to follow the rules, he or she cannot be allowed to simply open a new school.

COMMENT: N.J.A.C. 3.1(b)6. Several commenters challenged the Department's requirement that a statement be filed with the Department outlining the manner in which the program provides accessibility to the disabled or handicapped pursuant to "The Americans with Disabilities Act." It was pointed out that the issue of compliance or non-compliance under a particular set of facts is a question of Federal law rather than state regulatory jurisdiction. One commenter asked rhetorically if the Department would also require schools to outline the manner in which they would comply with anti-discrimination laws, RESPA, Truth-in-Lending, etc.

RESPONSE: The Department is not opposed to the position expressed and has accordingly removed references to "The Americans with Disabilities Act" from the provisions of N.J.A.C. 11:17-3.1(b)6 and 3.3(b)3ii. The Department has retained the references to the Act that appear at N.J.A.C. 11:17-3.3(b)14 and 3.4(g). The Department cautions school directors that failure to comply with the requirements of Federal law will indeed have a negative impact on the Department's approval of insurance education programs.

COMMENT: N.J.A.C. 11:17-3.1(c)3. Amounts of tuition, fees and other charges to be paid by students should be set by the schools, with no requirement to report charges to the Department. If fees are excessive, students will attend other institutions. This approach will permit laissez-faire economics to prevail.

RESPONSE: The requirement that programs seeking approval to teach courses of prelicensing education are to report to the Department the amount of tuition, fees and other charges to be paid by students was proposed to be deleted at 26 N.J.R. 1289(a), 1291.

COMMENT: N.J.A.C. 11:17-3.1(e)3. This rule is unclear as to whether current school programs will automatically be granted a fourth year before their program approval expires. Clarification is needed to specify that this subsection applies only to those schools seeking program approval for the first time after adoption. For all other school programs, the revised rule will apply when the current three-year program approval period concludes.

RESPONSE: The Department agrees. All certificates of approval contain an expiration date and are valid until then. Therefore, the revised rule can only apply to new schools and those renewing after adoption.

COMMENT: N.J.A.C. 11:17-3.1(f)2iv. Six commenters agreed that subjecting a director to revocation of a license for failure to comply with recordkeeping requirements would be excessive. They felt that revocation of license, being the most severe penalty that the Commissioner may impose, should be reserved for the most serious of violations such as those involving criminal conduct with regard to the sale of insurance. They pointed out that not every director holds a producer's license and that the proposed rule would impose a stricter penalty on those directors who do. Penalties should be assessed on an equal basis for all directors with the more serious penalties reserved for willful or negligent misconduct. In most cases, revocation of a program's approval would seem to be the appropriate penalty.

RESPONSE: The Department agrees. However, if the director is a licensed insurance producer and engages in wrongful activities such as stealing tuition money or selling credits without the student having attended, that producer should know that the Department will pursue license revocation.

COMMENT: N.J.A.C. 11:17-3.1(f)3. One commenter agreed with the requirement that the instructors should have at least five years' experience in insurance practice, insurance education or the equivalent, but questioned whether this experience should be derived "from the same line or lines of insurance for which the instructor is employed to

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teach courses...". This language, it was argued, could be strictly interpreted to require an instructor to have five years' experience in every line of insurance within a life license, health license or property/casualty license. Such an interpretation would cause an economic hardship on the schools since it is unlikely that qualified instructors meeting this requirement would be available. This commenter recommended instead that the requirement be to "possess at least five years' experience in insurance practice, insurance education or the equivalent" and eliminate the reference to line or lines of insurance.

Another commenter opined that restricting instructors to those lines of insurance in which they have experience should not be used as a criteria. The basic precepts of insurance are universal to all authorities and the specifics can and should be acquired through proper preparation. It was further submitted that the instructor's ability to acquire this information is screened by the instructor test. Lastly, it was suggested that this requirement would greatly reduce the available number of competent instructors and would act as a detriment to the school industry.

RESPONSE: The Department generally agrees with these comments. Accordingly, the words "authority or authorities" have been substituted for the words "line or lines" in paragraph (f)3. The five authorities set forth at N.J.S.A. 17:22A-10 are life, health, property/casualty, surplus lines and title insurance.

COMMENT: N.J.A.C. 11:17-3.1(f)3iii. At least three commenters failed to realize that paragraph (f)3 allows a person to teach courses of prelicensing education if he or she has at least five years' experience in insurance practice, insurance education or the equivalent, **and** (i) holds a recognized professional designation; **or** (ii) has passed the New Jersey Instructor Examination; **or** (iii) is a faculty member of an accredited college or university AND CURRENTLY TEACHING INSURANCE COURSES FOR COLLEGE CREDITS IN THE SAME SUBJECT MATTER, LINE OR LINES OF INSURANCE FOR WHICH THE INSTRUCTOR IS EMPLOYED TO TEACH COURSES. (Emphasis added.) Subparagraphs (f)3i and ii were not set forth in the proposal because, as to these provisions, no changes are being proposed. The capitalized language above is the new language proposed to be added to subparagraph (f)3iii. One commenter recommended that persons qualifying as faculty members of an accredited college or university be required to take the instructor's examination thereby creating a "level playing field." It was suggested that if the faculty member is qualified, then he or she should have no problem passing the instructor's examination. Another commenter maintained that the word "currently" in the proposed new language was ambiguous and should be deleted, suggesting the subparagraph (f)3iii be reworded to read: "Be a faculty member of an accredited college or university and possess a minimum of five years' experience in the line or lines of insurance for which he or she instructs." Yet another commenter recommended that the new language in subparagraph (f)3iii simply be reduced to "teaching insurance courses."

RESPONSE: The Department believes it is unnecessary to require faculty members of accredited colleges or universities to take the instructor's examination. The Department agrees, however, that the proposed new language (appearing in capitalized form above) should be amended to read "teaching insurance courses." The change has been made accordingly.

COMMENT: N.J.A.C. 11:17-3.1(f)8. With reference to maintaining copies of final examinations, commenters generally agreed that it should be sufficient to maintain each student's answer sheet along with **one** master copy of the exam.

RESPONSE: The Department agrees but has concluded that no change in the proposed language of this paragraph is required.

COMMENT: N.J.A.C. 11:17-3.1(j)6. Computerized schools presently administer a final examination at the last class session. The exam results are returned to the main office for processing. It is common for the director of such a school to sign certificates of completion on behalf of the instructor based on the exam results and attendance record submitted by the instructor. Not to allow this creates the unnecessary burden of having the instructor return for the sole purpose of signing certificates. Some schools allow final examinations to be taken by appointment, similar to the state examination procedure. This results in certificates being issued at staggered times creating an almost impossible situation if only the instructor's signature is allowed. Requiring that the instructor sign the certificate rather than the director creates the possibility of certificates being issued whithout the director's knowledge and usurping the director's supervisory obligation. Issuance of a certificate of completion is an administrative task and should properly be left to the administration, not the instructor.

RESPONSE: The Department has added language to paragraph (j)4 allowing a certificate to be signed by a director as well as by an instructor.

COMMENT: N.J.A.C. 11:17-3.1(m)5. Commenters took opposite positions with regard to the proposed change that would base calculation of the required passing rate for prelicensing education programs on first time test takers alone. One commenter favoring the proposal stated that the change would result in a more accurate accounting for each prelicensing education program that did the previous basis of counting each examination taken by each program graduate. It was pointed out that previously, one individual with his or her licensing school certificate (good for a two-year period) could significantly affect a program's passing rate by potentially taking and failing the licensing exam over 50 times. Another commenter expressed opposition to the proposed change stating that all tests taken should be considered in order to get a true determination of the effectiveness of the school performance. This commenter stated that if only the first time test takers were counted, it would indicate a lack of care about the students who failed the examination. The school's obligation is to all students, not just the ones that passed the state examination the first time. The true effectiveness of the school must be measured by taking into consideration the total picture.

RESPONSE: The Department decided upon recommendation of the School Directors Advisory Committee ("SDAC") that determination of the 70 percent passing rate should be on the basis of first time test takers alone. A study indicated that programs with multiple test failures would have a higher passing rate using the proposed new system. This was explained to the SDAC before the decision was made.

COMMENT: N.J.A.C. 11:17-3.1(p). One commenter stated that since directors bear the full responsibility for a school program, a school should not be penalized by having its authority revoked because of the behavior of the school director, concluding that education programs should not be subject to revocation. Another commenter recommended that a school that does have its program revoked should be allowed to reapply for reapproval after updating and changing the program to correct previous deficiencies and, perhaps, appointing a new director. It was suggested that a more reasonable time period might be one to two years.

RESPONSE: In many instances, the school director is the owner of the school and for all practical purposes is the school. In those situations where revocation has occurred, neither the school nor the director should be allowed to reapply for approval until an appropriate time period has passed. The five-year waiting period set forth in subsection (p) is no different than the time period that must elapse before an insurance producer whose license has been revoked may apply for a new license.

COMMENT: N.J.A.C. 11:17-3.2(j). One commenter expressed opposition to reducing from 60 to 30 the number of days from the date of issuance in which course waivers shall expire. This allows too little time for the license applicant to accomplish such tasks as obtaining the waiver through the mail, finding out where and when to take a licensing examination, and then arranging to sit for the examination. To save license applicants the frustration of having to reapply for the waiver as well as the Department the time and labor in renewing the waivers, the current language which leaves waivers in effect for 60 days from the date of issuance should be maintained.

RESPONSE: Thirty days is sufficient time to allow the applicant to take the examination five times if he or she wishes to do so. One could argue that if an applicant fails to pass the exam after two attempts, he or she needs the benefits of the prelicensing education requirements.

COMMENT: N.J.A.C. 11:17-3.4(a). For a variety of reasons, many commenters opposed the provision that would limit resident insurance producers to earning no more than 24 continuing education credits in any one calendar year.

RESPONSE: The Department has decided to delete this requirement. The change has been made accordingly.

COMMENT: N.J.A.C. 11:17-3.4(a). The sentence that proposes to limit "insurance related computer courses" to "one such course per four-year licensing period" needs to be clarified. What is being limited-rating courses or word processing business type courses or both?

RESPONSE: The Department intends to limit word processing business type courses wherein the application of the course content to insurance is either incidental or left to the student.

COMMENT: N.J.A.C. 11:17-3.4(a). Seven commenters objected to the last sentence of subsection (a) which would deny producers taking prelicensing insurance courses for the purpose of adding an authority, the continuing education credits for completing such courses. One com-

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menter pointed out that by granting continuing education credit for prelicensing courses, the Department would be providing added incentive for producers to expand their knowledge of insurance. Another commenter concluded that continuing education credit should be allowed regardless of the motive for taking the course.

RESPONSE: By its plain language meaning, continuing education can only occur if the basic knowledge has been learned. The purpose of continuing education is to make the producer more knowledgeable in the line or lines of insurance for which he or she has authority. Allowing credit for both preauthority **and** continuing education requirements obscures the distinction between the two and defeats the purpose of the latter.

COMMENT: N.J.A.C. 11:17-3.4(b). One commenter wanted to know why the Department needed a 30-day prior approval period for continuing education courses. Another commenter suggested that the Department be under a similar time constraint in reviewing course submissions and granting approval or disapproval. This would enable the schools to know the latest date on which they might expect a response to their filings. Two commenters suggested that language be added giving the Department the ability to waive the 30-day advance submission requirement upon a showing by the program of unusual circumstances such as a sudden change in the marketplace that may require immediate action.

RESPONSE: Those that have submitted courses for approval are aware that Department personnel respond to such submissions well within 30 days. This 30-day requirement is intended to ensure that approval is granted and the number of credits known in advance of the course being conducted. The Department agrees with the suggestion that it should have the ability to waive the 30-day requirement upon a showing of unusual circumstances. Appropriate language has been added accordingly.

COMMENT: N.J.A.C. 11:17-3.4(b)3. Several commenters responded to the proposed new language relating to clustering of courses. One commenter described clustering as "the most cost effective way of providing continuing education to the consumer" and agreed that courses offered in a cluster should be distinct and not overlapping. This commenter assumed that the intent of the proposed language was to prevent a school from dividing a single course into smaller parts for greater credit. This commenter also anticipated no difficulty with the suggested 30-day reporting requirement since schools "should know well in advance their schedule for clustered courses."

Other commenters found ambiguities in the proposed language. One suggested that it was the Department's objective "to put an end to the creative way providers are now submitting lengthy courses as smaller components thereby maximizing credits." This commenter stated that the effect of the proposed regulation would be "increased creativity aimed at avoiding the ambiguous cluster" and suggested that if the Department did not want an insurance producer to be able to satisfy approximately 20 percent of the required credits by attending a full day of classes that were submitted in two parts, "it should re-examine the entire requirement and system for awarding credits."

RESPONSE: The Department has reevaluated the system for awarding credits. The results of that reevaluation are the proposed amendments including the one related to the clustering of courses. Creativity is encouraged so long as it does not violate the integrity of the system or undermine its purpose.

COMMENT: N.J.A.C. 11:17-3.4(b)4. One commenter recommended that the amount of time the Supervisor of Insurance Education has to re-evaluate a course should be defined, suggesting "within 30 days."

RESPONSE: The Department is not aware of any course evaluation taking longer than 30 days. In fact, most if not all course evaluations are acted upon within seven days. Since the Department has no control over the volume of submissions and only limited control over staffing needs, such a requirement, if imposed, could become problematic.

COMMENT: N.J.A.C. 11:17-3.4(c)1 appears to be in conflict with N.J.A.C. 11:17-3.4(c)5. Are professional designation courses worth eight credits, 12 credits or 20 credits (as some schools have interpreted the current regulations)? It would make sense to grant additional credits to those producers diligent enough to obtain professional designations such as CLU and CPCU. If that is the intent of the regulation, it should be stated clearly.

RESPONSE: In order to encourage insurance producers to attain professional designations, the Department allows eight credits to be assigned to the classroom course which prepares the student for the examination. In addition, four continuing education credits are granted for each college credit assigned to the examination. In most cases, the examinations are assigned three credits so the producer may earn a total of 12 (3×4) continuing education credits. The Department is not aware of any basis upon which 20 credits may be awarded for any professional designation course only.

COMMENT: N.J.A.C. 11:17-3.4(c)1. Three commenters recommended that the Certified Insurance Counselor (CIC) designation be added to the list of professional designations which currently receive 12 continuing education credits for each completed part. CIC should be added because the length of the course, course content and the level of difficulty of CIC designation courses is consistent with that of the other designations listed. Further, the addition of the CIC designation is consistent with the treatment of the CIC designation at N.J.A.C. 11:17-3.4(c)4.

RESPONSE: The Certified Insurance Counselor (CIC) designation course has not yet been evaluated by the American Council on Education for college credits.

COMMENT: N.J.A.C. 11:17-3.4(c)3ii, as amended, would allow two credits for a full day six-hour course. One commenter failed to realize that additional credits could be received in connection with the same course.

RESPONSE: A full day advanced course receives two credits for duration plus four additional credits for intensity or six credits in total. N.J.A.C. 11:17-3.4(c)3ii and vi.

COMMENT: N.J.A.C. 11:17-3.4(c)5. Two commenters questioned the reference in paragraph (c)5 to "license" and suggested that this reference be omitted. Another commenter stated that continuing education credits should only be granted after a license is obtained and only for non prelicensing courses.

RESPONSE: The reference to "license" in paragraph (c)5 reflects that many schools are offering licensing courses as dual prelicensing and introductory continuing education courses. The information is important and prelicensing material is actually new material for many who were first licensed years ago. However, there was a limitation of credits suggested for this introductory material because it is part of the prelicensing program.

COMMENT: N.J.A.C. 11:17-3.4(c)5. One commenter recommended that courses offered to attain a professional designation be worth at least 12 credits, consistent with N.J.A.C. 11:17-3.4(c)1. Another commenter maintained that "designations are vital if we are to increase the professionalism of our industry." If credits are limited, agents will be less likely to attain a designation. In addition, certain designation programs are offered in separate, distinct courses and only upon completion of all of the required courses and successful testing would the designation be conferred. For producers who elect to take the courses for the knowledge and not sit for the examination, it would be unfair to allow only eight credits. Finally, how would designation courses currently approved for more than eight credits be addressed under this proposal?

RESPONSE: Advanced courses are allowed credits based on the content of the subject matter. The advanced nature of the courses are already taken into account. Preferential treatment cannot be given to one advanced course because it is from a designation grant or over another which is from an approved New Jersey insurance school.

COMMENT: N.J.A.C. 11:17-3.4(c)6. One commenter recommended that this paragraph be amended to exclude computer based and video based training. Computer based training in the continuing education context results in the student being left to interact with the computer by reading on-screen information, answering questions, etc. In these cases there may be an instructor available, but not necessarily in the room playing an active part in the training. This is currently allowed because the wording in the continuing education regulation states that an instructor should be on site. Another commenter asserts that some schools are granting credits for courses taken at a computer console. These schools argue that the instructor is "on site" to answer any questions or lend assistance if needed. It must be remembered that there are no required qualfications for continuing education instuctors so the instructor on site could be the receptionist. The Department's position has always been that an instructor must be in the room throughout the program and this position should be clearly expressed in the regulations. This is an existing abuse of the continuing education process and should be addressed at this time.

RESPONSE: There is no change in the Department's position that an instructor must be in the room contrary to the first commenter's assertion that the continuing education regulation states that an instruc-

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tor shoud be "on site." As requested, the Department has added language at N.J.A.C. 11:17-3.1(f)7 clearly stating this requirement.

COMMENT: N.J.A.C. 11:17-3.4(c)6. One commenter requests that the Department not limit the use of home sstudy courses. There are a number of programs, including the American College credits for PACE, that focus on home reading and answering questions for scoring. Merely because students sit in a classroom is absolutely no guarantee that learning is taking place. Because a student does home study does not mean the program should automatically be discounted. With the increase of computers in the hands of producers, schools in the future can develop home study programs that are computer based, and require students to complete a test at a specific passing score to secure credit. This is a viable, creative approach by which the Department can keep pace with the computer age, accommodate handicapped and nonhandicapped students, and promote self-directed learning.

RESPONSE: The continuing education program's value can only be realized if there is certainty that the person being granted the credits is the one gaining the knowledge. Home study courses have not demonstrated the ability to insure that the candidate is the one taking the course or the examination.

COMMENT: N.J.A.C. 11:17-3.4(g). We agree with the Department's proposal to allow handicapped or disabled persons, upon evidence of hardship, to take alternative courses such as home study when classroom attendance is an impediment due to the person's disability. We would recommend that the Department study the feasibility of allowing home study for continuing education courses. By so doing, the Department would recognize the needs of producers who often have conflicts with work related schedules in obtaining continuing education credits.

RESPONSE: In order to accommodate those who are disabled, the Department has broadened the scope of available courses to include home study, the use of which will be closely monitored. The Department is not willing to further extend the home study concept at this time.

COMMENT: N.J.A.C. 11:17-3.4(j), as proposed, changes the time period for the Department to notify producers whether their continuing education requirement has been met, from five months to four months prior to renewal. We believe this time period should be six months prior to renewal to allow producers sufficient time to react. If a producer is notified four months prior to renewal, he or she will essentially have one month to obtain credits and still renew by mail since programs have 30 days to send their rosters to Assessment Systems, Inc. ("ASI"). The time frame involved with the tape transfer between the Department and ASI must also be considered. The four-month proposal will create a large number of producers who will need their credits manually processed by Department staff in Trenton.

RESPONSE: Because notices are sent annually on January 1, every producer knows a minimum of 13 months prior to renewal the number of continuing education credits they have accumulated. The notice sent 120 days prior to renewal is intended to verify the accuracy of those credits already earned; not to prompt the producer to begin accumulating credits or completing course requirements. The producers will have had 44 months prior to the last notice to accumulate the credits and have them banked by ASI. Those who procrastinate will have to submit their renewal applications for manual processing. Where the credits are not earned until after renewal, a late renewal fee of $50.00 will be charged.

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

11:17-3.1 Approval of insurance education programs

(a) Professional schools, insurance companies and others who establish programs which include teaching of insurance courses to satisfy professional qualification requirements for prelicensing or continuing education shall, prior to conducting such courses, obtain approval in accordance with this section.

(b) An application for approval of an insurance education program shall be made on a form prescribed by the Commissioner and shall provide the following information:

1.-2.-(No change.)

3. The name of the program director or directors, New Jersey producer license reference number(s), if any, and a signed statement from each director that he or she has read this subchapter, understands his or her responsibilities as a director, and that he or she is fully responsible for the activity of the program;

4. (No change.)

5. The address of any permanent classroom or classrooms to be used by the program; ***and***

[6. A statement outlining the manner in which the program provides accessibility to the disabled or handicapped pursuant to "The Americans with Disabilities Act"; and]

*[7.]***6.*** (No change in text.)

(c) Programs seeking approval to teach courses of prelicensing education shall also provide:

1. (No change.)

2. The names of the courses, by license authority, which will be taught by the program, if approved; and

3. (No change in text.)

(d) Each application for program approval shall be certified as correct by the program director or directors named in the application, and shall be accompanied by a fee of $300.00. The application for approval shall be submitted to the Supervisor of Insurance Education at least 90 days prior to the anticipated opening of the program.

(e) Applications for program approval shall be reviewed to determine compliance with the requirements prescribed in this subchapter. An applicant shall supply such additional information or documentation as may be required by the Department to determine whether such requirements are met.

1.-2. (No change.)

3. A program approval shall expire in the fourth year on the last day of the licensing quarter in which it was effective.

4. (No change.)

(f) Each approved insurance education program (except as modified hereafter) shall:

1. (No change.)

2. Retain a director in charge of the program, who shall be accessible to the Department and the public at the program's permanent office as required in (f)1 above during normal business hours. The program director shall:

i. Oversee the program and activities of all instructors;

ii. Be responsible to carry out the program's administrative duties imposed by this subchapter; and

iii. Receive and distribute to all instructors and students communications from the Department and others. The director shall not have had his or her insurance license revoked.

iv. Failure by a licensed director to supervise the program for records compliance and attendance requirements for the issuance of school certificates and continuing education verificaton forms to students may result in action being taken against the director's producer license and/or the program.

3. Use knowledgeable and competent instructors to teach all courses. An instructor shall not have had his or her New Jersey insurance producer license revoked and shall in the opinion of the Commissioner, be otherwise of good character and reputation. Instructors employed to teach courses of prelicensing education shall possess at least five years' experience in insurance practice, insurance education or the equivalent which must be derived from the same *[line or lines]* ***authority or authorities*** of insurance for which the instructor is employed to teach courses, and shall, in addition:

i.-ii. (No change.)

iii. Be a faculty member of an accredited college or university *[and currently]* teaching insurance courses *[for college credits in the same subject matter, line or lines of insurance for which the instructor is employed to teach courses]*.

4. Be permitted to use special lecturers or guest speakers to instruct on particular topics, so long as the program carries out the recordkeeping and reporting requirements imposed by this subchapter. For prelicensing education courses, the use of substitute teachers, special lecturers or guest speakers shall not collectively exceed 25 percent of the total course hours.

5. Use classroom facilities with sufficient lighting, desks or tables and which are otherwise conducive to learning. Classroom facilities shall be open to the Commissioner or his or her designee for class monitoring at any time.

6. (No change.)

7. Conduct and administer courses in a manner reasonably calculated to assure that certificates or reports of courses attended and

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competed accurately reflect the students attendance and performance. ***Except as may be provided consistent with the provisions of N.J.A.C. 11:17-3.4(g), an instructor shall be physically present in the classroom during the conduct of the entire course including any tests or examinations.***

8. Maintain for five years the records of each student including the name(s) of the course or courses taken; proof that the course final examination was passed, if applicable; and copies of the final examinations and education certificates issued. Programs voluntarily terminating operations shall turn over education certificates to the Department within 14 days of ceasing operation.

9.-10. (No change.)

(g)-(i) (No change.)

(j) An approved insurance education program shall issue to each student who has successfully completed a prelicensing education course a certificate which shall contain the following:

1.-3. (No change.)

4. Signatures of the student and the instructor ***or the director of the program***;

5. (No change.)

6. A statement signed by an instructor that the student was instructed for the number of hours indicated on the certificate, that the instructor is satisfied that the student knows the material, and that the student has received at least a 70 percent minimum passing course grade on a final examination.

(k)-(l) (No change.)

(m) The Commissioner may suspend or revoke the approval of an insurance education program for any of the following reasons:

1. (No change.)

2. The failure to advise the Department promptly of any change in information initially submitted in the application during the period of approval including, but not limited to, change of director, school address, place or time of scheduled classes and instructors;

3.-4. (No change.)

5. For prelicensing education programs only, the failure to maintain an overall passing rate on the State insurance licensing examination of 70 percent or more for any period of 12 consecutive months. The 70 percent passing rate shall be determined on the basis of first time test takers;

6. For continuing education programs only, the failure to report to the Department or contract vendor the students' continuing education credits.

(n) Any school whose approval has been suspended or revoked shall turn over its education certificates to the Department within 14 days.

(o) As an alternative to suspension or revocation of approval, the Commissioner may place any program on probation with appropriate conditions or impose monetary penalties not to exceed $1,000 for the first violation and $2,000 for each succeeding violation.

(p) No insurance education program or director whose approval has been revoked may reapply for approval for a period of five years.

11:17-3.2 Prelicensing education

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

(j) Waivers shall expire in 30 days from the date of issuance and shall thereafter be reissued or renewed for good cause only, upon presentation of evidence satisfactory to the Commissioner. Any such extension shall not exceed one additional period of 30 days.

11:17-3.3 State licensing examination; use of independent examination vendor; exemptions; retaking of examination

(a) (No change.)

(b) Any contract for development and administration of the New Jersey State insurance producer licensing examination shall include, without limitation, the following terms and conditions:

1.-2. (No change.)

3. The contract vendor shall:

i. (No change.)

ii. Provide all physical facilities *[which shall be in compliance with "The Americans with Disabilities Act"]*; and

iii. (No change.)

4.-5. (No change.)

6. The contract vendor shall administer the examination in accordance with the contract, which shall contain adequate provisions for preregistration of test candidates, score reporting, security measures and such other provisions that, in the opinion of the Department, assure fair and consistent administration of the examination.

7. (No change.)

8. The contract vendor shall score examinations promptly, and shall provide score reports to all passing and failing candidates within 15 calendar days after each test date.

9.-12. (No change.)

13. The Department shall have the sole responsibility for establishing minimum qualifications and passing requirements of candidates taking the licensing examination.

14. The contract vendor shall defend and indemnify the Department of Insurance, the State of New Jersey and its agents, officers and employees from all claims, actions, damages, liability and expenses in connection with loss of life, personal injury, damage to property and/or failure to comply with the requirements of "The Americans with Disabilities Act" arising out of the ownership, occupancy or use by the contract vendor of any facilities used as test administration centers, occasioned wholly or in part by any act or omission of the contract vendor, its agents, contractors or employees.

15. The contract vendor shall provide technical and legal assistance to the Department in the event of any legal challenge to the validity of any examination administered, prepared and/or copyrighted by the contract vendor or the Department in which the State of New Jersey or any of its agencies, officers or employees is named as a party.

16. (No change.)

17. The contract vendor shall transmit to the Department, in a form satisfactory to the Department, information collected during the test registration process to aid in prompt licensing of passing candidates, and may issue to passing candidates, on a form prescribed by the Department, a temporary work authority. The contract vendor shall deliver the test registration data of passing candidates to whom a temporary work authority has been issued within 30 days of the date of the test.

(c) (No change.)

(d) Applicants previously licensed as non-residents shall apply for a waiver of prelicensing education and pass the State examination within 90 days of meeting the definition of resident licensee; otherwise the license will no longer be valid for failure to qualify as a resident.

(e) (No change in text.)

(f) For good cause shown, the Commissioner may, by order, require an applicant for licensure or a licensee to retake the State licensing examination within a specified period of time. The order shall clearly and fully state the alleged factual circumstances upon which it is based. In the case of a licensee, a license shall remain effective pending the results of the new examination unless otherwise subject to revocation or suspension.

1. (No change.)

2. After review of the record, the Commissioner shall either rescind the order or require the licensee or applicant for licensure to retake the examination within a prescribed period of time.

i. If a licensee fails to retake the examination within the prescribed period of time, the Commissioner shall issue an Order to Show Cause why the license should not be revoked and shall advise the licensee of his or her right to a hearing pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

ii. If an applicant for licensure fails to retake the examination within the prescribed period of time, the Commissioner may refuse to issue the license for which application is made and shall advise the applicant for licensure of his or her right to a hearing pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(g) Resident individuals registered by any insurance company to do business as a limited insurance representative dealing with bail

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bonds or mortgage guarantee insurance shall have taken and passed an examination given by the company thereby demonstrating an appropriate level of competency as a limited insurance representative with respect to these lines of insurance. The insurance company registering such persons shall confirm that this requirement has been met, and the limited insurance representative shall maintain evidence of meeting this requirement at his or her place of business.

11:17-3.4 Continuing education

(a) No resident individual insurance producer license shall be renewed with an effective date on or after May 1, 1995 unless the renewal applicant demonstrates that he or she has completed 48 continuing education credits during the previous four years. *[Resident insurance producers may earn no more than 24 credits in any one calendar year.]* Insurance related computer courses must be limited to one such course per four-year licensing period. Producers taking prelicensing insurance courses for the purpose of adding an authority shall not be granted continuing education credits for completing such courses.

(b) Approved insurance education programs shall submit to the Department for certification of continuing education credits, at least 30 days prior to the date the course is to begin, such courses as they may develop. ***This 30-day requirement may be waived upon a showing by the program of unusual circumstances that require immediate action.***

1. A request for continuing education credit certification shall be made on a form prescribed by the Department which shall request the following information.

i.-ii. (No change.)

iii. The number of actual classroom hours required to complete the course;

iv. Such other information as may, in the opinion of the Department, be necessary to evaluate the course for certification of continuing education credits; and

v. Whether the course will be offered independent of other approved courses or as part of a cluster of courses given within a single day or on succeeding days.

2. (No change.)

3. Courses which have been submitted and evaluated independently may be offered as a cluster of courses only if the subject matter of the courses is distinct and not overlapping. When such courses are being offered consecutively, notice of such offering shall be made to the Supervisor of Insurance Education for reevaluation at least 30 days prior to its anticipated administration.

4. The Supervisor of Insurance Education shall certify courses submitted for continuing education credits as provided above, or disapprove the course for continuing education credits, and notify the program director of the decision. In the event of disagreement with the decision, the program director may, within 30 days of receipt of notice from the Department, supply the Supervisor of Insurance Education with a written request for reevaluation supported by reasons for disagreement with the decision and such additional information as may be appropriate. The Supervisor of Insurance Education shall promptly reevaluate the course and advise the program director of the result of the Supervisor's reevaluation.

5. (No change in text.)

(c) Continuing education credits shall be certified in accordance with the following:

1. Each completed part of the Chartered Life Underwriter (CLU), Chartered Financial Counselor (ChFC) and Chartered Property/Casualty Underwriter (CPCU) designations shall be worth 12 continuing education credits.

2. Each college level insurance course completed and passed at an accredited college, university or entity other than a college which has been evaluated and approved for college credit by the American Council on Education shall be worth four continuing education credits for each semester hour of college credit.

3. The number of continuing education credits certified shall be based upon the length of the course, course content and the level of difficulty. Each continuing education course submitted by an approved insurance education program may, depending upon the evaluation of the course content and whether the courses are offered independently or clustered with other courses, be worth the total number of credits computed in accordance with the following schedule.

i. One credit for a half day three-hour course;

ii. Two credits for a full day six-hour course;

iii. Three credits for a two day 12-hour course;

iv. Four credits for a course more than two days comprising 13 hours or more;

v. Two additional credits for a basic level or introductory course; and

vi. Four additional credits for an advanced course.

4. (No change.)

5. Courses offered to attain a professional designation or license will be worth no more than eight credits.

6. No approval will be granted for home study or correspondence courses except as provided in (g) below.

(d) (No change.)

(e) Producers who request continuing education credit pursuant to (c)1 or 2 above, shall submit to the Department, on a form prescribed by the Department, the request together with a transcript or other documentation certifying completion of the course and college credits awarded.

(f) Attorneys who are licensed for title insurance only shall submit to the Department, at least six months but not more than one year prior to renewal, a certificate of good standing issued by the clerk of the Supreme Court of New Jersey accompanied by a completed form prescribed by the Department, which provides the attorney's name, producer reference number, date of birth, social security number and license expiration date.

(g) The Commissioner may grant credit for alternative courses, such as home study for handicapped or disabled persons, as defined by "The Americans with Disabilities Act," when classroom attendance is an impediment due to the person's disability. Evidence of such hardship in the form of a certification by a physician shall be submitted with any such request. The request shall describe how the person's disability is an impediment to classroom attendance. Individuals with disabilities shall contact the Supervisor of Insurance Education prior to alternative course enrollment at the Department of Insurance, CN 329, Trenton, New Jersey 08625.

(h) (No change in text.)

(i) If the accounting required by (h) above is considered by the resident producer to be inaccurate, he or she shall promptly request the director of the approved education program to file with the Department, or its designee, an appropriate supplemental report.

(j) At least four months prior to the renewal of license, the Department, or its designee, shall issue to individual resident producers a statement indicating, based on current records, whether the continuing education requirement for renewal has been met. In the event the producer asserts that credit has not been recorded for a certified continuing education course, it shall be the sole responsibility of the producer to request the director of the approved program where the course was taken to file with the Department, or its designee, a supplemental report of continuing education credits.

11:17-5.1 (No change in text.)

11:17-5.2 Professional qualifications

No continuing education credits shall be accepted for courses completed prior to May 1, 1991.

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LAW AND PUBLIC SAFETY

(a)

DIVISON OF CONSUMER AFFAIRS STATE BOARD OF VETERINARY MEDICAL EXAMINERS

Rules of the State Board of Veterinary Medical Examiners

Readoption with Amendments: N.J.A.C. 13:44 Adopted Repeals: N.J.A.C. 13:44-1 and 5

Proposed: May 16, 1994 at 26 N.J.R. 1951(a).

Adopted: June 22, 1994 by the Board of Veterinary Medical Examiners, David Meirs, President.

Filed: August 4, 1994 as R.1994 d.442, **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. 45:16-3.

Effective Date: August 4, 1994, Readoption;
September 6, 1994, Amendments.

Expiration Date: August 4, 1999.

The Board of Veterinary Medical Examiners afforded all interested parties an opportunity to comment on the proposed readoption of N.J.A.C. 13:44. The notice of proposal appeared in the New Jersey Register on May 16, 1994 at 25 N.J.R. 1951(a), and copies of the published proposal were forwarded to the Star Ledger, the Trenton Times and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Veterinary Medical Examiners, Post Office Box 45020, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

During the 30-day comment period, the Board received one letter in response to the proposed readoption from Richard J. Alampi, Executive Director of the New Jersey Veterinary Medical Association. Following is a summary of the issues raised by the Association together with the Board's responses.

N.J.A.C. 13:44-1.1 Eligibility for admission to New Jersey Practical Examination

COMMENT: The reference in subsection (b) to a temporary permit holder working "as an assistant" should be deleted for clarification. As used in N.J.S.A. 45:16-8.1(6), assistant refers to a non-veterinarian. The commenter points out that a supervised permit holder would not be considered an assistant because the permit holder is permitted to diagnose, prescribe, treat, administer, etc.

RESPONSE: The Association is correct that use of the word "assistant" in subsection (b) is not consistent with the statutory definition and may be misleading. The Board has therefore clarified subsection (b) upon adoption by substituting the term "assistant veterinarian" for the word "assistant." N.J.A.C. 13:44-2.2(a)2 has been similarly amended.

COMMENT: The reference in subsection (b) to a temporary permit holder working under the responsible supervision of a "qualified" licensee should be deleted. "Qualified" is not defined, and the existing requirement that the licensee be "acceptable to the Board" should be satisfactory.

RESPONSE: The Board agrees and will delete the word "qualified" as unnecessary. The fact that a candidate must be "acceptable" to the Board provides the Board with sufficient oversight with regard to approval of supervisors.

N.J.A.C. 13:44-1.3 New Jersey Practical and Jurisprudence Examinations; passing score; examination review

COMMENT: In subsection (a), "70" should be expressed as "70.0" to avoid confusion.

RESPONSE: The numbers "70" and "70.0" have a different mathematical value when test scores are rounded off. In the best interests of applicants, the Board decided to maintain the present scoring.

COMMENT: It is unrealistic to expect an applicant to remember the precise wording of every question solely by review of an answer sheet. Therefore, subsection (b) should be amended to permit review of the actual examination papers and not merely the answer sheet so that an individual who so chooses may adequately prepare an appeal and research reference material.

RESPONSE: The Board has previously considered this issue and continues to maintain that release of the examination papers would have a detrimental impact upon exam security. Unlike some other professional examination services, this Board's examination service does not provide the opportunity to request hand scoring. Release of the answer sheet is intended to provide the applicant with, at minimum, the assurance that there are no grading errors.

N.J.A.C. 13:44-1.5 Required documentation; application for licensure by waiver of examination

COMMENT: An applicant may have difficulty obtaining certifications regarding licenses held more than 10 years prior to application. Accordingly, certifications should be required only from every state in which the applicant is or has been licensed within the immediately preceding 10 years.

RESPONSE: Licensure by endorsement is a privilege extended to qualified individuals who comply with Board rules. Information regarding all periods of licensure is essential in order to assist the Board in its review process. The Board does not believe that obtaining such information will be unduly burdensome; however, in instances when records may not be available, a letter from an appropriate authority verifying that the licensee was in good standing may be acceptable.

COMMENT: The requirement that the Board be notified if an applicant's privilege to practice veterinary medicine was ever suspended or revoked by an authority should apply to all applicants, not just equine practitioner applicants. To accomplish this, the second sentence of subparagraph (a)2i should be recodified as (a)2ii.

RESPONSE: The Board agrees and has recodified this subparagraph as paragraph (a)3 to clarify its original intent that this requirement apply to all applicants.

N.J.A.C. 13:44-2.2 Eligibility for temporary permit

COMMENT: An applicant's employment is often contingent upon obtaining a temporary permit. Therefore, paragraph (a)2 should be amended to require that the candidate "will be (rather than "is") employed for the duration of the temporary permit."

RESPONSE: The Board appreciates the commenter's suggestion and has amended paragraph (a)2 accordingly.

N.J.A.C. 13:44-4.1 Prescriptions

COMMENT: Subsection (e) should be amended to clarify the need for a bona fide doctor/patient relationship prior to providing a written prescription.

RESPONSE: Existing subsection (b) (which the Board proposed for readoption without change) does state that a licensee shall not "prescribe, sell, dispense or distribute any prescription item unless a bona fide client/patient relationship exists." In reviewing this section again, the Board determined to amend it upon adoption to use the term more commonly used in profession; that is, "veterinary" client/patient relationship.

COMMENT: The phrase "[owner or caretaker] who does not wish to purchase a prescription item directly from the licensee" is unnecessary and should be deleted from subsection (e).

RESPONSE: The Board disagrees. Use of this phrase was intended to be informative to the owner or caretaker who might not know that prescription items can be purchased from sources other than the licensee. Therefore, the Board will retain this phrase.

N.J.A.C. 13:44-4.9 Patient records

COMMENT: The Board should permit the treating licensee to be identified by code on the patient record, with a key to the code provided when requested. Many veterinary hospitals use code identifications (which are adaptable for computer applications) for staff veterinarians.

RESPONSE: The Board recognizes that new computer applications should be addressed and will amend paragraph (a)1 accordingly. The Board points out that the provisions of subsection (c) will ensure that the owner or caretaker is provided with sufficient information as to the treating licensee in that it requires the licensee to release "a key to any codes, abbreviations and non-English words appearing on such record" whenever records are released.

COMMENT: Not every case leads to a diagnosis. Therefore, paragraph (a)7 should be reworded as "conclusions **and/or** diagnosis."

RESPONSE: The Board agrees and has amended paragraph (a)7 accordingly.

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COMMENT: Paragraph (a)10 should be deleted because it creates an additional and unnecessary burden on licensees and their staff. This paragraph requires that the record reflect "the name, initials or other identifying information to indicate the identity of the licensee or agent making the entry in the patient record."

RESPONSE: The Board believes that identification of the treating licensee is necessary and essential consumer information that must appear on patient records. The Board does not believe providing such identification will be unduly burdensome to the licensee.

COMMENT: A new section should be added to clearly state that records are the property of the licensee and, as such, are confidential. The commenter provided suggested rule text.

RESPONSE: The Board acknowledges that all records, including x-rays, are the property of the licensee. However, in the Board's opinion a regulation so stating is not necessary at this time as the Board is unaware of any complaints involving patient record ownership. Nevertheless, the Board is currently discussing the formulation of regulations concerning confidentiality, and patient record ownership is likely to be addressed in that context.

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

SUBCHAPTER 1. LICENSURE BY EXAMINATION; LICENSURE BY WAIVER OF EXAMINATION; BIENNIAL LICENSE RENEWAL; REINSTATEMENT

13:44-1.1 Eligibility for admission to New Jersey Practical Examination

(a) As a prerequisite to taking the New Jersey Practical Examination, an applicant shall be required to submit proof of:

1. Successful completion of any of the following educational criteria:

i. A doctoral degree in veterinary medicine from a veterinary college or university accredited by the American Veterinary Medical Association (AVMA);

ii. All but the last portion of the last semester of a veterinary college or university accredited by the American Veterinary Medical Association and is to be awarded a degree in veterinary medicine at the next graduation; or

iii. The training program administered by the Education Commission for Foreign Graduates (ECFVG) of the AVMA; and

2. A passing grade, as determined by the test sponsor, on the National Board Examination and the Clinical Competency Test within 10 years preceding application.

(b) An individual who meets the requirements of (a) above and who has made application to sit for the next scheduled practical examination shall be eligible for a temporary permit to be employed as an assistant ***veterinarian*** in New Jersey under the responsible supervision of a *[qualified]* New Jersey licensed veterinarian acceptable to the Board at a practice located in the State of New Jersey, pursuant to the provisions of N.J.A.C. 13:44-2.

13:44-1.2 Required documentation; admission to New Jersey Practical Examination

(a) The applicant shall submit or arrange to have submitted, at least two months prior to the New Jersey Practical Examination, all of the following documents:

1. A completed application form which requests brief educational and experiential background;

2. The application fee set forth in N.J.A.C. 13:44-5.1;

3. Two passport size photographs;

4. National Board Examination and Clinical Competency Test scores through Interstate Reporting Service;

5. If the applicant is a graduate of an AVMA accredited program, an official transcript of veterinary school credits, to be forwarded directly to the Board by the college or university attended.

i. The transcript must contain signatures of college officials and be properly stamped.

ii. If the transcript is in a language other than English, the applicant must submit a verified English translation; and

6. If the applicant is a graduate of an ECFVG Program, notification that the applicant has satisfactorily completed the program, to be forwarded directly to the Board by the ECFVG office.

13:44-1.3 New Jersey Practical and Jurisprudence Examinations; passing score; examination review

(a) Applicants shall be required to obtain a grade of 70 on the New Jersey Practical Examination. Applicants applying for licensure by waiver of the Practical Examination shall be required to obtain a grade of 70 on the New Jersey Jurisprudence Examination.

(b) Within 14 days of the date of the letter of notification of examination results, an applicant who fails the examination may apply to the Board, in writing, for review of his or her answer sheet. The Executive Director will subsequently make the answer sheet available to the applicant at the Board office on a mutually convenient date.

(c) Within 14 days following review of the answer sheet, the applicant may file with the Executive Director a written notice of appeal of his or her examination grade. The notice must explain the basis of the appeal and be accompanied by any documentation, including reference material, which the applicant claims supports the appeal.

(d) The Board shall consider the appeal within 30 days of filing and may invite the candidate to appear for a hearing on the appeal.

(e) A candidate who has failed the New Jersey Practical Examination must wait five years from the date of the examination before applying for a license by waiver of examination.

13:44-1.4 Licensure by waiver of examination

(a) The Board shall waive the New Jersey Practical Examination for an applicant who:

1. Has held, for a minimum of five years immediately preceding application, a valid unsuspended and unrevoked license to practice veterinary medicine issued after examination by the District of Columbia or another state or territory which has education and examination requirements substantially equivalent to those required for licensure in New Jersey;

2. Has had active clinical experience of a type acceptable to the Board for three of the five years immediately preceding application;

3. Except as set forth in (b) below, has passed the National Board Examination and Clinical Competency Test; and

4. Presents no basis for concern as to competency or fitness for licensure and otherwise qualifies for licensure pursuant to N.J.S.A. 45:16-6.

(b) The National Board Examination requirement shall not apply to anyone who was licensed in another jurisdiction prior to June 1970 (the date the NBE first was administered). The CCT shall not apply to anyone who was licensed in another jurisdiction prior to 1982 (the date the test was first required by the Board.)

(c) An individual who qualifies under this section for licensure by waiver of the New Jersey Practical Examination shall be required to successfully complete the New Jersey Jurisprudence Examination.

13:44-1.5 Required documentation; application for licensure by waiver of examination

(a) An applicant for licensure by waiver of the New Jersey Practical Examination shall submit or arrange to have submitted all of the following documents:

1. All of the documents required pursuant to N.J.A.C. 13:44-1.2;

2. A certification from every state in which the applicant is or has been licensed verifying that the applicant holds or held a valid, unsuspended and unrevoked license to practice, and other pertinent information the Board may require;

[i. An equine practitioner shall have the Racing Commisison of each state in which the applicant has practiced file a statement of good standing with the Board.]

3. A statement of good standing from any other entity that authorizes the applicant's practice of veterinary medicine; for example, the Racing Commission. The applicant shall *[also]* notify the Board in the event that his or her privilege to practice veterinary medicine was ever suspended or revoked by an authority.

*[3.]****4.*** Three notarized certifications of experience regarding the applicant, submitted directly by veterinarians actively licensed

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and practicing in the same jurisdiction(s) for which the experience is being certified. Each certification shall:

i. Be on professional letterhead stationery;

ii. State the exact dates of the period being certified;

iii. Indicate the type of experience acquired, for example, bovine, exotic, equine or small animal;

iv. Certify to the applicant's moral character; and

v. Provide a critical evaluation of the applicant's ability to practice with a professional recommendation for licensure.

13:44-1.6 Biennial license renewal

(a) Licensees shall renew their licenses by the date set forth on the application for biennial license renewal.

(b) The Board shall, upon notice to the licensee, suspend the license of any individual who fails to renew his or her license by the date set forth on the renewal application.

13:44-1.7 Reinstatement

(a) A licensee whose license has been suspended for failure to renew shall be reinstated at any time provided that the licensee:

1. Submits the following to the Board:

i. An application for license;

ii. The current and any past due biennial licensure fees; and

iii. The reinstatement fee as set forth in N.J.A.C. 13:44-5.1; and

2. Presents no basis for concern as to competency or fitness for licensure and otherwise qualifies for licensure pursuant to N.J.S.A. 45:16-6.

SUBCHAPTER 2. TEMPORARY PERMITS

13:44-2.1 Non-licensed veterinarians; permit required

A licensee shall not engage the services of a non-licensed veterinarian for the purpose of being trained or to practice veterinary medicine, dentistry or surgery unless the licensee first obtains a temporary permit issued by the Board.

13:44-2.2 Eligibility for temporary permit

(a) The Board shall issue a temporary permit to a licensed veterinarian seeking to employ an individual who is scheduled to take the next New Jersey Practical Examination or Veterinary Jurisprudence Examination provided that:

1. The candidate for licensure has received a passing grade, as determined by the test sponsor, on the National Board Examination and the Clinical Competency Test;

2. The candidate *[is]* ***will be*** employed at a practice located in New Jersey as an assistant ***veterinarian*** under the responsible supervision of a New Jersey licensed veterinarian; and

3. Neither the potential employer nor the potential employee presents a basis for concern as to fitness or competency and both otherwise qualify for continuing licensure or initial licensure, respectively, pursuant to N.J.S.A. 45:16-6.

(b) A person practicing under a temporary permit who fails the New Jersey Practical Examination or Veterinary Jurisprudence Examination shall file an application for a new temporary permit within two weeks of the date the examination results were issued.

(c) An individual who fails the practical examination four times shall not continue to work under a temporary permit. Such individual may, however, continue to be reexamined until he or she successsfully completes the examination.

(d) A temporary permit shall not be transferable.

SUBCHAPTER 3. FACILITY REGISTRATION

13:44-3.1 (Reserved)

SUBCHAPTER 4. GENERAL RULES OF PRACTICE

13:44-4.1 Prescriptions

(a) (No change.)

(b) A licensee shall not prescribe, sell, dispense or distribute any prescription item unless a bona fide ***veterinarian*** client/patient relationship exists. For the purpose of this subsection, a bona fide ***veterinarian*** client/patient relationship shall exist when:

1.-3. (No change.)

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

(e) The licensee shall, upon request, provide a written prescription to an owner or caretaker who does not wish to purchase a prescription item directly from the licensee.

13:44-4.2 (No change in text.)

13:44-4.3 Licensees who service pet shops

(a) A licensee who services pet shop(s) shall sign and print his or her name on each animal's health certificate or "Fit for Purchase" form, and on any other document which may be given to the consumer at the time of purchase that attests to findings made, care rendered or care prescribed for that animal by a licensed veterinarian.

(b) A licensee who signs an animal health certificate or "Fit for Purchase" form, or any other documents as set forth in (a) above shall:

1. Personally examine all pets before prescribing or administering medication;

2. Comply with N.J.A.C. 13:44-4.1 regarding prescriptions;

3. Not supply vaccine or other medications for which a prescription is necessary to pet shops to be administered by anyone other than the owner(s) of the pet shop or a licensee of the New Jersey Board of Veterinary Medical Examiners.

i. In the event a pet shop is owned and operated as a partnership or a corporation, the entity may designate an individual to receive and to administer the vaccine and medications; and

4. Maintain in his or her office accurate medical records listing all medications furnished to pet shops and the individual(s) to whom medications and vaccines, or prescriptions therefore, were delivered. Such records shall include, but not be limited to, the name and address of the recipient pet shop, date supplied, type of medication and strength per unit, number of units supplied, and directions given for use.

Recodify existing 13:44-2.5 and 2.6 as 4.4 and 4.5 (No change in text.)

13:44-4.6 (No change in text.)

Recodify existing 13:44-2.10 and 2.11 as 4.7 and 4.8 (No change in text.)

13:44-4.9 Patient records

(a) A licensee shall maintain a separate patient record for each animal, herd or flock. All patient records shall accurately reflect the treatment or services rendered. Such records shall include at least the following information:

1. The name of the facility and *[the name]* ***identification*** of the treating licensee. If the patient is treated by anyone other than the licensee, the licensee shall ensure that the identity of the individual providing the service is indicated in the patient record and that the provider initials and dates each entry he or she makes on the patient record;

2. The name, address and telephone number of the owner of the animal;

3. Sufficient information to clearly identify the animal, herd or flock (for example, animal name or tattoo, breed or predominent breed species);

4. A history of the presenting problem;

5. All pertinent symptoms and signs observed;

6. Tests ordered or performed and the results thereof;

7. Conclusions*[/]* ***and/or*** diagnosis;

8. The treatment or treatment plan prescribed, including a specific notation of any medications or modalities prescribed;

9. Such other notes or information so as to provide a clear statement of the patient's condition and the veterinary evaluation and response;

10. The name, initials or other identifying information to indicate the identity of the licensee or agent making the entry in the patient record; and

11. Copies of any consent forms signed by the owner or the owner's representative.

Recodify existing (a) through (d) as (b) through (e) (No change in text.)

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Recodify existing 13:44-2.14 and 2.15 as 4.10 and 4.11 (No change in text.)

SUBCHAPTER 5. FEE SCHEDULE

13:44-5.1 General provisions
(a) The following fees shall be charged by the Board:
1.-3. (No change.)
4. New Jersey Jurisprudence Examination 125.00
5. Temporary Permit 100.00
Recodify existing 8.-13. as 6.-11. (No change in text.)

TRANSPORTATION

(a)

THE COMMISSIONER

Administration, Organization and Management Organization of Department

Adopted Amendment: N.J.A.C. 16:1A-1.2

Adopted: July 19, 1994 by W. Dennis Keck, Acting Assistant Commissioner for Policy and Planning.
Filed: August 12, 1994 as R.1994 d.453.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 52:14B-4(b) (exempt organizational rule).

Effective Date: August 12, 1994.
Expiration Date: June 13, 1999.

In accordance with N.J.S.A. 52:14B-4(b), these amendments to the organizational rule at N.J.A.C. 16:1A-1.2 may be adopted without prior notice or hearing and are effective upon filing.

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

16:1A-1.2 Organization of Department
(a) The Department of Transportation is organized as indicated in the Organizational Chart (see Appendix A) and the functions and responsibilities of its officers are as follows:
1.-2. (No change.)
3. The Assistant Commissioner for Policy and Planning reports to the Commissioner with principal responsibilities in the following areas:
i. Transportation Assistance **(including Outdoor Advertising)**;
ii.-vi. (No change.)
4.-5. (No change.)
6. There are five Executive Directors for Regional Operations **reporting to the Commissioner**. Each [Regional] Executive Director has a principal responsibility in the following areas:
i. Region I—Construction Operations, Maintenance Operations, Materials Operations, **and** Electrical Operations[, and Traffic Operations North];
ii. Region II—Construction Operations, Maintenance Operations, Materials Operations, [and] Electrical Operations**, and Traffic Operations North**;
iii.-iv. (No change.)
v. Region V—[Outdoor Advertising Services,] Construction **Engineering**, Materials **Engineering and Testing**, Equipment **Engineering and Operations**, Maintenance Engineering **and Operations**, and Project Support **and Engineering**.
7. (No change.)
8. Other officials within the Department report to the Commissioner. These officials include the:
i.-ii. (No change.)
iii. Inspector General; [and]
iv. Director of Affirmative Action[.]**; and**
v. Executive Director of the Division of Aeronautics.

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Turn Prohibitions
Route U.S. 206
Hillsborough Township, Somerset County

Adopted Amendment: N.J.A.C. 16:31-1.1

Proposed: June 20, 1994 at 26 N.J.R. 2547(a).
Adopted: July 27, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: July 29, 1994 as R.1994 d.439, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123, 39:4-183.6 and 39:4-199.1.

Effective Date: September 6, 1994.
Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:31-1.1 Route U.S. 206
(a) Turning movement of traffic on certain parts of State highway Route U.S. 206 described in this subsection are regulated as follows:
1.-2. (No change.)
Recodify existing 4. and 5. as 3. and 4. (No change in text.)

(c)

REGIONAL OPERATIONS, REGION 5
BUREAU OF CONSTRUCTION ENGINEERING

Construction Control

Readoption with Amendments: N.J.A.C. 16:45

Proposed: June 20, 1994 at 26 N.J.R. 2547(b).
Adopted: August 8, 1994 by W. Dennis Keck, Acting, Assistant Commissioner for Policy and Planning.
Filed: August 12, 1994 as R.1994 d.454, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 27:2-1 through 2-8.

Effective Date: August 12, 1994, Readoption;
September 6, 1994, Amendments.
Expiration Date: August 12, 1999.

Summary of Public Comments and Agency Responses:
One comment was received from Mr. Robert Briant, Assistant Executive Director, Utility and Transportation Contractors Association of New Jersey, Lakewood, New Jersey.

COMMENT: Mr. Briant commented that the second sentence of N.J.A.C. 16:45-4.1(a) is misleading. It states, "Only for specific projects in which the specifications provide for the review of claims by the claims review board, and only where the contractor and the Department agree to such a review, may claims be presented to the claims review board for administrative resolution." Mr. Briant thought that this language could be interpreted in a manner that suggests that all construction projects that are bid may not contain the option for the contractor to escrow his bid documents which triggers the use of the claims review board, and that only individual claims which the contractor and Department agree to such, may be brought to the claims review board for resolution.

RESPONSE: The Department has determined that the segment of the sentence "only for specific projects in which the specifications provide for the review of claims by the Claims Review Board . . ." is still deemed relevant and necessary. There are 1983 specification projects and an initial group of 1989 specification projects that are not completed and

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the specifications for those projects do not contain the Claims Review Board process.

The Department has, however, determined that the segment of the sentence "and only where the contractor and the Department agree to such a review" is ambiguous and has been removed.

Full text of the adoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:45.

Full text of the adopted amendments follows (deletions from proposal indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 1. GENERAL PROVISIONS

16:45-1.1 Scope and purpose

The rules of this chapter outline when it is appropriate, and the procedures to be followed, to bring contract claims matters before the Department's claims committee and the Department's claims review board. These two groups may each provide a level of claims review above that which is routinely available at the Department's construction project field staff level and its regional management level. Also, this chapter indicates whether the claims committee is the final level of agency review available for a particular claimant or whether the review can go a step further, that is, to the claims review board level.

16:45-1.2 Definitions

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

"Specifications" means the Standard Specifications and the Supplemental Specifications.

"Standard Specifications" means the 1983 and the 1989 edition of the book entitled "New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction," as appropriate, as amended and supplemented.

"Supplementary Specifications" means amendments or revisions that update the Standard Specifications, or which customize the Standard Specifications for particular road and/or bridge construction contracts.

SUBCHAPTER 2. CLAIMS COMMITTEE

16:45-2.1 Claims committee

(a) (No change.)

(b) The claims committee shall be comprised of the following:

1. Chairperson—Executive Director, Regional Operations, Region 5;

2. Director, Division of Regional Design;

3.-4. (No change.)

5. Secretary for the claims committee (non-voting member to be designated by the chairperson).

16:45-2.2 Claims committee procedures

(a) The procedures set forth in this section establish a method of reviewing contractual disputes and in no way constitute a waiver by the State of New Jersey of its sovereign immunity from suit.

(b) For contracts in which the specifications do not provide for the review of claims by the claims committee prior to contract completion, the following procedures apply:

1. The contractor shall comply with the provisions of the contract specifications which govern the documentation and submission of claims.

2. The claims committee will accept for consideration all claims which have been properly presented and reserved under the specifications and which have not been resolved prior to the completion of the contract.

3. The contractor shall notify the secretary of the claims committee in writing of its desire to have unresolved claims reviewed by the committee. This written notice shall be given within 30 days of the completion of the contract and a copy of this notice shall be sent by the contractor to the executive director (also referred to as the regional director) of the region in charge of administering the contract. The appropriate executive director shall forward to the secretary of the claims committee all information previously submitted by the contractor in support of its claims. Failure by the contractor to give such written notice within 30 days of the completion of the contract shall bar review by the claims committee.

4. Within 45 days of the receipt of the contractor's written request for claims committee review, the claims committee will schedule a meeting for review of the claims submitted. The contractor may appear at the meeting and make an oral presentation in support of its claims. If the contractor does not appear at the meeting, the claims committee will base its review of the claims on the written information previously supplied by the contractor and forwarded to the committee by the appropriate executive director.

(c) For contracts in which the specifications provide for the review of claims by the claims committee prior to contract completion, the procedure shall be as set forth in contract specifications Section 100—General Provisions (typically found in Sections 107 and 109 of the specifications).

16:45-2.3 Disposition

(a) The Commissioner or the Commissioner's designee shall make final determination on all claims reviewed by the Department's claims committee.

(b) For contracts in which the specifications do not provide for the review of claims prior to contract completion, the secretary of the claims committee shall notify the contractor of the Commissioner's or Commissioner designee's decision and the contractor shall accept or reject the decision within 60 days. The contractor shall, within 60 days of that notification, indicate that the decision is acceptable by executing and delivering an unconditional release of all claims against the State, the Commissioner and the Department, their agents, officers and employees as to all claims. If the contractor rejects the decision, no further Departmental action will be taken. If the contractor has not indicated its acceptance of the decision in the manner stated above, the claims committee decision will be considered rejected and no further Departmental action will be taken. Upon acceptance of the claims committee decision, the Department shall pay the decision amount to the contractor in accordance with the New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq.

(c) For contracts in which the specifications provide for the review of claims by the claims committee prior to contract completion, the Department and the contractor shall comply with the provisions of the specifications which govern the disposition of claims as set forth in contract specifications Section 100—General Provisions (typically found in Sections 107 and 109 of the specifications).

(d) For contracts in which the specifications do not provide for the review of claims by a claims review board, and where the claims committee has completed its review and a final Commissioner (or designee) determination has been made, there shall be no further Departmental review of the claims.

SUBCHAPTER 3. (No change in text.)

SUBCHAPTER 4. CLAIMS REVIEW BOARD

16:45-4.1 Claims review board

(a) The claims review board is an administrative body available to review and resolve claims that arise under the contract; and its function is supplemental to the claims committee review process. Only for specific contracts in which the specifications provide for the review of claims by the claims review board, *[and only where the contractor and the Department agree to such a review,]* may claims be presented to the claims review board for administrative resolution. The presentation of a claim to the claims review board shall in no way alter or affect other rights of the contractor, including the right, pursuant to the Contractual Liability Act, N.J.S.A. 59:13-1 et seq., to seek redress in the courts. Said presentation to the claims review board shall in no way alter or affect the applicable statute of limitations.

(b) The claims review board is comprised of three members appointed by the Commissioner for a two year term:

1. Chairperson—a Department manager;

2. A Construction Industry Advancement Program (CIAP) representative; and

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3. A member who is a subject matter expert (such as an engineer), who is not involved with the Department or with the contractor.

16:45-4.2 Claims review board procedures

(a) The procedure set forth in this section establish a method of reviewing contractual disputes and in no way constitute a waiver by the State of New Jersey of its sovereign immunity from suit.

(b) The contractor shall comply with the provisions of the specifications which govern the reservation, presentation, documentation and submission of claims to the claims review board as set forth in contract specifications Section 100—General Provisions (typically found in Sections 107 and 109 of the specifications). Claims review board matters are further limited to those cases in which there is full compliance with the bid document escrow requirement, the cost sharing requirement, and other such requirements, if any, as set forth in contract specifications Section 100—General Provisions (typically found in Sections 103, 107 and 109 of the specifications).

16:45-4.3 Disposition

The Department and the contractor shall comply with the provisions of the specifications which govern the disposition of claims as set forth in contract specifications Section 100—General Provisions (typically found in Sections 107 and 109 of the specifications).

TREASURY-GENERAL

(a)

STATE INVESTMENT COUNCIL

International Government and Agency Obligations Limitations

Adopted Amendment: N.J.A.C. 17:16-20.2

Proposed: July 5, 1994 at 26 N.J.R. 2751(a).
Adopted: August 8, 1994 by the State Investment Council, Roland M. Machold, Director, Division of Investment.
Filed: August 8, 1994 as R.1994 d.445, **without change**.

Authority: N.J.S.A. 52:18A-91.

Effective Date: September 6, 1994.
Expiration Date: May 2, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

17:16-20.2 Limitations

(a) (No change.)

(b) All international government and agency obligations must be rated at least double-A by either Moody's Investors Service Inc. or Standard & Poor's Corporation or have equivalent ratings.

(c) (No change.)

OTHER AGENCIES

(b)

SOUTH JERSEY TRANSPORTATION AUTHORITY

Rules of Operation

Readoption with Amendments: N.J.A.C. 19:2

Proposed: May 16, 1994 at 26 N.J.R. 1966(a).
Adopted: July 19, 1994, by South Jersey Transportation Authority, Walter A. DeAngelo, Executive Director.
Filed: August 15, 1994 as R.1994 d.462, **without change**.

Authority: N.J.S.A. 27:25A-7(q) and 27:25A-21(g).

Effective Date: August 15, 1994, Readoption;
September 6, 1994, Amendments.
Expiration Date: August 15, 1999.

Summary of Hearing Officer Recommendations and Agency Response:

The South Jersey Transportation Authority (the "Authority"), in accordance with its enabling legislation, conducted three public hearings on its proposed readoption with amendments, one on June 3, 1994 at the Authority's Administration Building in Hammonton, New Jersey, the second on June 7, 1994 at Authority office located at 25 New York Avenue, Atlantic City, New Jersey, and the last hearing on June 10, 1994 at the Glassboro City Hall, 1 S. Main Street, Glassboro, New Jersey. All three hearings were co-chaired by Vincent Leonetti and Robert Vallance of the Authority. No one from the public appeared at any of the public hearings and no comments were received. The hearing record may be reviewed by contacting Mr. Leonetti, at the Authority.

Summary of Public Comments and Agency Responses:

Written comments were received until June 15, 1994.

COMMENT: Comments were received from the New Jersey Motor Bus Association, Inc. and the Atlantic City Bus Operators Association with regard to proposed amendments to N.J.A.C. 19:2-6.2(a)4 which allows for toll free passage for motor buses on regular route service and the benefit of the public operated by the State of New Jersey, any county, municipality or charitable or non-profit corporation. There was concern about the exemption of only public New Jersey Transit buses but not privately operated buses. The proposal was said to discriminate against private operators and their passengers. It was further stated that the proposed rule does a disservice to the public as the public continues to subsidize New Jersey Transit but those who choose to ride on a different private motor bus carrier receive no assistance toward holding down their own fare. The Motor Bus Association, Inc. and the Atlantic City Bus Operators Association interpret the law to require all carriers to be exempt from tolls.

RESPONSE: In proposing the amendment to the rules, the Authority is following the mandates of the Authority's enabling legislation provided in N.J.S.A. 27:25A-19(a). The language of the statute makes it clear that the Legislature, when enacting it, did not intend to exempt private, profit-making organizations from the payment.

New Jersey Transit was created to promote public transportation and to perform an essential governmental function. Exempting New Jersey Transit from paying tolls is rationally related to achieving a legitimate State objective of promoting public transportation and performing an essential governmental function. Moreover, considering the public interest that N.J.S.A. 27:25A-19(a) serves, there will not be a disservice to the public by exempting New Jersey Transit from tolls and not exempting private carriers.

At the present time, the Atlantic County Bus Operators Association has brought an action in the Superior Court, Chancery Division, Camden County, challenging the Authority's interpretation of this section of the statute. It is the Authority's position that it is following the clear mandates of the New Jersey Legislature in promulgating this rule.

In the event the court determines that the legislative intent is otherwise, then the Authority, after exhausting all of its judicial remedies, will amend the rule in accordance with the judicial interpretation.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 19:2.

Full text of the adopted amendments follows:

SUBCHAPTER 1. PENALTIES AND DEFINITIONS

19:2-1.1 Penalties

(a) Under the terms of paragraph 21(o) of the Authority's enabling legislation, N.J.S.A. 27:25A-1 et seq., any violation of any of the regulations established by the Authority with regard to the payment of tolls or the operation of motor vehicles, including, but not limited to, all traffic and parking regulations, regulations concerning the type, weight and size of vehicles permitted to use the project, and regulations prohibiting hazardous activities shall be punishable by a fine not exceeding $500.00, or by imprisonment not exceeding 30 days, or by both such fine and imprisonment.

(b) (No change.)

(c) A violation shall be tried in a summary way and shall be within the jurisdiction of and may be brought in the Special Civil Part of the Law Division of the Superior Court or any municipal court in the county where the offense was committed.

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(d) In addition to any punishment or penalty provided in this section, every registration certificate and every license certificate to drive motor vehicles may be suspended or revoked and any person may be prohibited from obtaining a driver's license or a registration certificate and the reciprocity privileges of a nonresident may be suspended or revoked by the Director of the Division of Motor Vehicles for any such violation, after due notice in writing of the proposed suspension, revocation or prohibition and the grounds thereof, all otherwise in accordance with the powers, practices and procedure established by the provisions of Title 39 of the Revised Statutes applicable to the suspension, revocation or prohibition.

(e) Except as otherwise provided by this section or by any regulation contained in this chapter, the requirements of Title 39 of the Revised Statutes applicable to persons using, driving or operating vehicles on the public highways of this state and to vehicles so used, driven or operated shall be applicable to persons using, driving or operating vehicles on any expressway project and to vehicles so used, driven or operated.

19:2-1.2 Definitions

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

"Atlantic City Expressway" or "Expressway" means the expressway project known as the Atlantic City Expressway, constructed by the New Jersey Expressway Authority pursuant to Section 40 of P.L. 1962, c.10 (N.J.S.A. 27:12C-40, repealed).

"Authority" means the South Jersey Transportation Authority created by Section 4 of the South Jersey Transportation Authority Act (N.J.S.A. 27:25A-1 et seq.).

...

"Expressway project" means the acquisition, construction and maintenance of the Atlantic City Expressway as transferred to the Authority pursuant to the enabling legislation and of any express highway, super highway or motor way at the locations and between the termini as may hereafter be established by law and acquired or to be acquired or constructed or to be constructed under the provisions of the enabling legislation by the Authority, over which abutters have no easements or rights of light, air or direct access by reason of the fact that their properties abut thereon, and shall include, but not be limited to, bridges, parking facilities, tunnels, overpasses, underpasses, interchanges, traffic circles, grade separations, entrance plazas, approaches, toll booths, service areas, stations and facilities, communications facilities, administration, storage and other buildings, and other structures related to the use of the express highway, super highway or motor way, intersecting highways and bridges and feeder roads which the Authority may deem necessary or desirable for the operation of the project, together with all property rights, easements and interests which may be acquired by the Authority for the construction or the operation of the project, and includes any planning necessary for the execution of any expressway projects.

...

"Motorbus regular route service" means the operation of any motorbus or motorbuses on streets, public highways or other facilities, over a fixed route and between fixed termini on a regular schedule for the purpose of carrying passengers, for hire or otherwise, within South Jersey or between points within South Jersey and points without South Jersey.

...

"Service areas" means those areas established by the Authority to provide services to the public. On the Expressway these areas include an intercept parking lot, the New Jersey State Police Barracks, the South Jersey Transportation Authority Administration Building, a restaurant, a gasoline service station, and a farmers market, along with their parking and related facilities.

19:2-1.3 Route maps

A route map showing the Expressway is available upon request at a manned toll booth, at the administrative offices of the Expressway, and at the Tourist Information Center located at the service plaza inside the restaurant area.

SUBCHAPTER 2. SPEED LIMITS

19:2-2.1 Maximum speed limits

(a) Except where otherwise posted, the maximum speed limits in force on the Expressway are 55 miles per hour on the main roadways and 25 miles per hour on the entrance and exit ramps.

(b) Maximum speed of 55 miles per hour is in effect except when such speeds are unsafe by reason of weather or highway conditions.

(c) (No change.)

SUBCHAPTER 3. OPERATION OF VEHICLES

19:2-3.6 Parking, standing or stopping of vehicles

(a)-(g) (No change.)

(h) Parking of casino buses and trucks in the appropriate intercept lot and marshalling of vehicles in designated areas shall be at the direction of the Authority.

(i) Exiting vehicles at unattended toll ramps shall be prohibited.

19:2-3.8 Vehicles involved in accidents

The operator of any vehicle upon the expressway project involved in an incident resulting in injury or death to any person or damage to any property shall immediately stop the vehicle at the scene of the incident, render assistance as may be needed, and give his or her name, address, and operator's license and motor vehicle registration number to the person injured and to any officer or witness of the injury and shall make a report of the incident in accordance with law.

19:2-3.9 Civil Defense regulations

Applicable Civil Defense regulations, as promulgated by the Governor and the Department of Law and Public Safety of the State of New Jersey, shall be complied with on the Expressway.

19:2-3.10 (No change in text.)

SUBCHAPTER 4. RESTRICTIONS ON USE OF THE EXPRESSWAY

19:2-4.3 Restricted vehicles

(a) The following vehicles are prohibited at all times from using the Expressway:

1.-4. (No change.)

5. Construction equipment other than trucks and construction equipment belonging to the Authority;

6.-8. (No change.)

9. Vehicles or combination of vehicles, including any load thereon, which exceed the following maximum dimensions:

i. Length: 62 feet;

ii. Width: Eight feet, six inches;

iii. Height: 13 feet, six inches;

iv. Maximum Gross Weight: 80,000 pounds.

10.-12. (No change.)

19:2-4.4 Transportation of dangerous articles

(a) (No change.)

(b) All vehicles transporting dangerous articles on the Expressway shall comply with all of the regulations of the State of New Jersey regarding the transportation of such articles as covered in N.J.S.A. 39:5A-1 et seq.

(c) No person shall transport in or upon any expressway project, any dynamite, nitroglycerin, black powder, fireworks, blasting caps or other explosives, gasoline, alcohol, ether, liquid shellac, kerosene, turpentine, formaldehyde or other inflammable or combustible liquids, ammonium nitrate, sodium chlorate, wet hemp, powdered metallic magnesium, nitro-cellulose film, peroxides or other readily inflammable solids or oxidizing materials, hydrochloric acid, sulfuric acid, or other corrosive liquids, prussic acid, phosgene, arsenic, carbolic acid, potassium cyanide, tear gas, lewisite or any other poisonous substances, liquids or gases or any compressed gas, or any radioactive article, substance or material, at a time or place or in a manner or condition as to endanger unreasonably or as to be likely to endanger unreasonably persons or property.

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(d) If a violation of (c) above shall result in injury or death to a person or persons or damage to property in excess of the value of $5,000, it shall constitute a crime of the third degree.

SUBCHAPTER 5. GENERAL REGULATIONS

19:2-5.4 Parades, demonstrations, picnics and the like

(a) (No change.)

(b) Picnics, games, entertainment, sports, or other gatherings are prohibited, except in designated areas of the Service Area.

SUBCHAPTER 6. TOLLS

19:2-6.2 Toll-free passage

(a) Unless specifically authorized by the Authority, no toll-free passage through toll collection points on the Expressway will be permitted, except for the following:

1. The Commissioners and executive staff members of the Authority;

2. Employees of the Authority, and its concessionaires, and members of the State Police assigned to the Authority in the actual course of performance of such duties, or while travelling to or from the place of performance of such duties;

3. (No change.)

4. Any motorbus operated on motorbus regular route service for the benefit of the public by the State of New Jersey, in accordance with the New Jersey Public Transportation Act of 1979, N.J.S.A. 27:25-1 et seq., or by any county, municipality, charitable or nonprofit corporation or organization; and

5. Ambulance, first aid or emergency aid vehicles, vehicular fire fighting apparatus, or other similar vehicle, operated for the benefit of the public by the State, or by any county or municipality or charitable or non-profit corporation or organization, first aid squad, emergency squad, or fire company of this State;

SUBCHAPTER 7. PURCHASING REGULATIONS

19:2-7.1 General provisions

(a) All purchases, contracts, or agreements of the Authority, shall be made or awarded directly by the Authority, except as otherwise provided in this chapter, after public advertisement for bids, in the manner prescribed in this chapter, and notwithstanding the provisions of any other laws to the contrary. The objective of these regulations is to enable the Authority to accomplish its procurement equitably and expeditiously at the least possible cost.

(b) Any purchase, contract or agreement may be made, negotiated or awarded by the Authority without public bid or advertising under the following circumstances:

1. For the furnishing or performing services of a professional or technical nature;

2. When the aggregate amount of such purchase or contract does not exceed the threshold amount as determined by the Governor;

3. To acquire subject matter described in N.J.S.A. 52:34-9;

4. To award a contract under circumstances described in N.J.S.A. 52:34-10;

5. For the supplying of any product or rendering of any service by a public utility;

6. When the Authority deems it appropriate to have the work performed by its own employees;

7. When the Authority has advertised for bids on two occasions and received no bids or no responsive bids on both occasions;

8. When a piece of equipment requires diagnostic repairs;

9. For the printing of bonds and related documents for the sale thereof; or

10. To contract for liability or indemnification insurance to meet the needs of the Authority.

19:2-7.2 Purchases in excess of $11,100 or the threshold as set by the Governor

(a) Rules concerning advertising and awards of bids include the following:

1. All purchases of personal property or services where the aggregate cost is $11,100 or more, which threshold amount shall be adjusted by the Governor as provided in (a)2 below, shall be made only after public advertisement for competitive bids, except where exempted by law. In cases where public advertising is not required, the Authority shall follow the rules and regulations of the State Treasurer to ensure that said purchase, contract or agreement promotes full and free competition whenever competition is practicable.

2. The Governor, in consultation with the Department of the Treasury, shall, no later than March 1 of each odd numbered year, adjust the threshold as set forth in paragraph 1 in direct proportion to the rise or fall of the Consumer Price Index for all urban consumers in the New York City and the Philadelphia area as reported by the United States Department of Labor. The adjustment shall become effective on July 1 of each odd numbered year, and such amount shall determine the threshold for competitive bidding.

3. Advertisements for competitive bids shall be placed in appropriate newspapers or journals, having a large circulation in the State. All advertisements may be approved by the Executive Director. Such advertisements shall be published not less than seven calendar days preceding the date upon which the proposals are to be received and opened. All advertisements must contain:

i.-iii. (No change.)

4. In addition to advertising, bids may be solicited from all known interested parties by mail. Such solicitations shall provide prospective bidders with at least the same information contained in the public advertisement.

5. (No change in text.)

6. When the requisitioning unit specifies either the source or the brand name of personal property or services with a value exceeding the adjusted threshold, the related Department head shall file with the Director of Finance a memorandum stating the basis or reasons for the particular selection; the memorandum shall be approved by the Executive Director prior to submission to the Commissioners.

7. Prior to the award of any contract, the Director of Finance and Executive Director shall forward their recommendations to the Commissioners. All awards of contracts shall be made by the Commissioners. The Executive Director or his or her designee may reject any and all bids when such rejection is in the best interests of the Authority. In determining the Authority's best interest, the Authority may consider, but is not limited to, the following:

i. Availability of funds;

ii. Budgetary constraints; and/or

iii. Credibility and reliability of bidder.

8. For valid reasons, the Commissioners may award the contract to a person other than the lowest bidder.

(b) (No change.)

1.-4. (No change.)

5. With respect to bids submitted, the Executive Director or his or her designee may reject any and all bids when such rejection is in the best interests of the Authority in accordance with the criteria set forth in N.J.A.C. 19:2-7.2(a)(7). The Authority retains the right to waive informalities and minor irregularities and to make awards at any time within 60 calendar days of the public opening. If an award is not made within 60 calendar days of public opening, written extensions of time should be obtained from bidders whose bids remain under consideration.

6.-7. (No change.)

(c) (No change.)

(d) Rules concerning bid guarantees include:

1. Except when specifically waived by the Authority, all bids submitted relative to acquisitions wherein the total bid price aggregate exceeds the adjusted threshold, shall be accompanied by a bid guaranty in an amount not less than ten per cent of the bid. However, no bidder shall be required to make a deposit in excess of $20,000.

2. In furtherance of the Authority's policies of advancing opportunities for small business enterprises including minority and women-owned businesses, the Executive Director, in his discretion, may modify the bid bond requirement on contracts with a value of $50,000 or less to allow that bidders on such contracts to post a certified check in the amount of five percent of the bid amount or $1,000, whichever is less, which check would serve as the bid and performance bond of such bidder on such contract.

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3. In the event any bidder fails to accept an award in accordance with his bid, the security submitted shall be forfeited.

4. All bid guarantees shall be returned to bidders as soon as possible after the opening of bids.

(e) Rules concerning security for faithful performance include:

1. Where the aggregate cost of all purchases of personal property or services exceeds the adjusted threshold, the successful bidder, simultaneously with his delivery of the executed contract to the Authority in addition to all of the foregoing requirements, may be required to furnish a surety bond or bonds as security for faithful performance of the goods and services to be furnished in accordance with the bid quotations and for the payment of all persons performing labor on the project and furnishing materials in connection therewith as specified in the general conditions covering the submission of bids and furnishing of personal property and services.

2. (No change.)

3. In furtherance of the Authority's policies of advancing opportunities for small business enterprises including minority and women-owned businesses, the Executive Director, in his or her discretion, may modify this requirement on contracts with a value of $50,000 or less to allow that bidders on such contracts to post a certified check in the amount of five percent of the bid amount or $1,000, whichever is less, which check would serve as the bid and performance bond of such bidder on such contract.

(f) (No change.)

19:2-7.3 Purchases under the adjusted threshold

(a) In the case of purchases or personal property or services where the aggregate cost or amount involved is equal to or exceeds $1,000, but is less than the bid threshold, written bids shall be solicited by mail from qualified vendors.

(b) Where the acquisition is less than $1,000, informal bids should be solicited from qualified vendors.

(c) (No change.)

(d) When the requisitioning unit specifies either the source of supply or a name brand, the related Department head shall file with the Director of Finance a memorandum stating the basis and reasons for the selection; the memorandum shall be approved by the Executive Director should the acquisition be $1,000 or more.

(e) The award of the contract or order shall be made by the Director of Finance with the approval of the Executive Director.

(f) (No change.)

19:2-7.4 Limited purchase orders

(a) Purchases of personal property and services of a value not exceeding $100.00 may be made on limited purchase orders directly by employees so authorized in writing by the Executive Director under procedures promulgated by the Director of Finance.

(b) (No change.)

19:2-7.5 Purchase orders and contracts

(a) All purchase orders shall be signed by the Director of Finance and approved by the Department head of the requisitioning unit.

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

19:2-7.6 Purchases under New Jersey State contracts

When it is deemed advisable and in the best of the Authority, the manager of purchasing may recommend that services, equipment, goods, materials and supplies be purchased directly, without advertising, from vendors who hold contracts with the State of New Jersey for the furnishing of such items to the State.

(a)

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Definitions, Service, Construction

Readoption with Amendments: N.J.A.C. 19:10

Proposed: June 6, 1994 at 26 N.J.R. 2205(a).

Adopted: July 28, 1994 by the Public Employment Relations Commission, James W. Mastriani, Chairman.

Filed: July 28, 1994 as R.1994 d.437, **without change.**

Authority: N.J.S.A. 34:13A-11.

Effective Date: July 28, 1994, Readoption;
September 6, 1994, Amendments.

Expiration Date: July 28, 1999.

Summary of Public Comment and Agency Response:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 19:10.

Full text of the adopted amendments follows:

19:10-1.1 Definitions

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

...

"Director of Arbitration" means that officer of the commission designated to act on behalf of the commission with respect to arbitration procedures contained in N.J.A.C. 19:12 and 19:16.

"Director of Conciliation" means that officer of the commission designated to act on behalf of the commission with respect to those matters related to negotiations impasses contained in N.J.A.C. 19:12 and 19:16.

"Director of Representation" means that officer of the commission designated to act on behalf of the commission with respect to those matters relating to representation procedures contained in N.J.A.C. 19:11.

"Director of Unfair Practices" means that officer of the commission designated to act on behalf of the commission with respect to those matters relating to unfair practice proceedings contained in N.J.A.C. 19:14.

"Election agent" means that officer of the commission designated to conduct elections in accordance with the procedures set forth in N.J.A.C. 19:11.

...

"Showing of interest" means a designated percentage of public employees in an allegedly appropriate negotiations unit, or a negotiations unit determined to be appropriate, who are members of an employee organization or have designated it as their exclusive negotiations representative or have signed a petition requesting an election for decertification of public employee representative. When requesting certification, such designations shall consist of written authorization cards or petitions, signed and dated by employees normally within six months prior to the filing of the petition, authorizing an employee organization to represent such employees for the purpose of collective negotiations; current dues records; an existing or recently expired agreement; or other evidence approved by the director of representation. When requesting decertification, such designations shall consist of written petitions, signed and dated by employees normally within six months prior to the filing of the petition, indicating that the employees no longer desire to be represented for purposes of collective negotiations by the recognized or certified exclusive representative or by any other employee representative.

...

19:10-2.1 Time for filing papers; Commission address

(a)-(c) (No change.)

(d) When these rules require the filing of any paper, the original of such document must be received by the commission or the officer

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or agent designated to receive such matter before the close of business of the last day of the time limit, if any, for such filing or extension of time that may have been granted. Facsimile transmission will not be accepted as a proper or timely filing.

(e) Any filings or other correspondence sent to the Commission by mail should be addressed to:

Public Employment Relations Commission
CN 429
Trenton, New Jersey 08625-0429

(f) Any filings or other correspondence sent to the Commission by courier or in person should be delivered to:

Public Employment Relations Commission
495 West State Street
Trenton, New Jersey 08625-0429

19:10-2.2 Form of documents

(a) (No change.)

(b) Except as otherwise provided in these rules, any documents or papers shall be filed with four copies in addition to the original. All matters filed with the commission shall be printed, typed or otherwise legibly duplicated on letter size paper (8½ inch by 11 inch); copies will be accepted only if they are clearly legible.

(c) (No change.)

19:10-2.3 Service of pleading and other process; proof of service

(a) Notices of hearings, decisions, orders and other process or papers may be served personally or by registered or certified mail and proof of service established by the verified return of the individual serving the same, setting forth the manner of such service or return post office receipt.

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

19:10-3.1 Rules to be liberally construed

(a) Except as stated in (c) below, whenever the commission or a designated officer finds that unusual circumstances or good cause exists and that strict compliance with the terms of these rules will work an injustice or unfairness, the commission or such officer shall construe these rules liberally to prevent injustices and to effectuate the purposes of the act (N.J.S.A 34:13A-1 et seq.).

(b) (No change.)

(c) In accordance with N.J.A.C. 1:1-1.3, the burden of proof shall not be relaxed.

19:10-5.1 Description of organization

(a) (No change.)

(b) The staff of the commission consists of the personnel of the Division of the Public Employment Relations, all of whom have been designated officers of the commission (N.J.A.C. 19:10-1.1). The division is divided into three general sections—impasses, representation and unfair practices, which correspond to the three main areas of responsibility delegated to the commission by the act. (See N.J.S.A. 34:13A-6(b); N.J.S.A. 34:13A-6(d); and N.J.S.A. 34:13A-5.4(c), respectively.) The commission has designated a staff member of the division to be the director of the particular section of the division which administers that area of responsibility and has delegated to that officer the powers conferred on the commission in connection with the discharge of the duty or duties delegated as set forth in the appropriate chapters of these rules. (See N.J.A.C. 19:10-1.1 for the definition of Director of Arbitration; Director of Conciliation; Director of Representation; and Director of Unfair Practices. An additional area of statutory responsibility, scope of negotiations proceedings (N.J.S.A. 34:13A-5.4(d)), is administered under the direct supervision of the chairman.

(c) The staff of the commission also includes a full-time general counsel and one or more deputies who render legal advice with respect to commission matters, and represent the commission in judicial proceedings pursuant to special counsel appointments under N.J.S.A. 52:17A-13. Additionally, the chairman of the commission is assisted in the performance of his or her duties, particularly in the area of scope of negotiations proceedings, by an individual designated by the commission as the special assistant to the chairman.

(d) (No change.)

(a)

CASINO CONTROL COMMISSION

General Provisions

Readoption with Amendments: N.J.A.C. 19:40

Proposed: June 20, 1994 at 26 N.J.R. 2564(a).

Adopted: August 9, 1994 by the Casino Control Commission, James R. Hurley, Acting Chair.

Filed: August 15, 1994 as R.1994 d.461, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-54, 60, 63c, 69a and 74; N.J.S.A. 52:14B-3.

Effective Date: August 15, 1994, Readoption;
September 6, 1994, Amendments.

Expiration Date: August 15, 1999.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes:

Upon adoption, a typographical error found in the Code at N.J.A.C. 19:40-1.3(g)2 is corrected. The word "test" is corrected to read "text." Also, the test period in N.J.A.C. 19:40-1.3(g) is revised to specify the 270 day period now permitted by section 69e of the Casino Control Act, N.J.S.A. 5:12-69.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 19:40.

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

19:40-1.3 Construction and amendments

(a)-(f) (No change.)

(g) Pursuant to N.J.S.A. 5:12-69(e), the Commission may authorize the temporary adoption, amendment or repeal of any rule concerning the conduct of gaming or the use or design of gaming equipment for an experimental period not to exceed *[90]* ***270*** days, for the purpose of determining whether such rules should be adopted on a permanent basis. Any interested person may file a petition for temporary rulemaking with the Commission in accordance with N.J.A.C. 19:40-3.6.

1. (No change.)

2. The Commission shall post the *[test]* ***text*** of any temporary rule in each casino participating in the experiment and shall make copies of such text available upon request to the Commission.

(b)

CASINO CONTROL COMMISSION

Applications

Position Endorsements; Experience and Training Requirements

Gaming Schools

Courses and Programs of Instruction; Minimum Hours

Adopted New Rules: N.J.A.C. 19:41-1.5A, 1.8 and 1.9; and 19:44-8.6

Adopted Amendments: N.J.A.C. 19:44-5.2 and 8.3

Proposed: June 6, 1994 at 26 N.J.R. 2207(a).

Adopted: August 9, 1994 by the Casino Control Commission, James R. Hurley, Acting Chair.

Filed: August 10, 1994 as R.1994 d.447, **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. 5:12-63c, 69a, 70a, 80a, 86a, 89, 90 and 94.

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Effective Date: September 6, 1994.
Expiration Date: April 15, 1995, N.J.A.C. 19:41;
December 15, 1996, N.J.A.C. 19:44.

Summary of Agency-Initiated Changes:

The language of N.J.A.C. 19:41-1.9(c)3ii and (d)2iii is modified upon adoption to clarify the intent of the Commission. The Commission wishes to allow individuals who had previously completed dealer training in a particular game to get "credit" for that course(s) without having to attend a supervisory course for the same game. The amount of time that the Commission would allow individuals to get "credit" for a dealer course is limited to a period of one year from the operative date of the new rule, but the applicant must have been enrolled in the dealer course prior to the effective date of the new rule. The adoption is also revised to specify the effective date of the rules.

In addition, the game of pai gow, an authorized game which was inadvertently omitted, has been included in the list of authorized games in the experiential rules. Finally, subparagraph N.J.A.C. 19:41-1.9(c)3ii has been modified. As is clear from the proposal at N.J.A.C. 19:44-8.6(b)2, persons who are permitted to take advantage of the supervisory training course option are those individuals who have evidenced a minimum amount of supervisory experience. The modification provides the necessary consistency with N.J.A.C. 19:41-1.9(d) and (e).

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement, Bally's Grand (The Grand), Professional Dealers School (PDS) on behalf of itself, Casino Career Institute (CCI) and The Boardwalk & The Marina Casino Dealers School of Atlantic City, Inc. (CDS), and CDS individually.

COMMENT: Several commenters suggested increases or reductions in the proposed hours of training and experience. The Grand suggests that the poker dealer training course be maintained at 80 hours rather than increased to 100 hours; that the blackjack dealer training course be maintained at 85 hours rather than increased to 95 hours; that the baccarat/minibaccarat dealer training course be reduced from 95 hours to 90 hours; that the 115 hour poker dealer training course be reduced to 95 hours; that all pai gow poker dealer training courses be reduced anywhere from five to 25 hours; that the various supervisory training courses be reduced anywhere from 10 to 15 hours.

PDS makes similar suggestions. Specifically, PDS suggests that the various blackjack and baccarat dealer training courses be reduced anywhere from five to 10 hours; that the poker dealer training course be reduced from 115 hours to 105 hours; that the various pai gow poker dealer training courses be increased anywhere from 10 to 15 hours; and that the various supervisory training courses be increased or decreased by five hours.

CDS, who submitted individual responses in addition to those submitted on its behalf by PDS, further suggests that the poker dealer training course be increased from 100 hours to 140; that the first game craps dealer training be increased from 240 hours to 300 hours; that the various pai gow poker dealer training courses be increased anywhere from 10 to 15 hours;

RESPONSE: The Commission has reviewed each of the above comments and disagrees that any further adjustment in the proposed hours is merited. The number of hours for each dealer training course and supervisory training course were carefully reviewed by a committee consisting of representatives from the casino industry, the gaming schools, the Division and the Commission. The proposal reflects the committee's review. The proposed hours are based upon the Commission's practical experience and observations during the implementation and continued existence of these games in Atlantic City. Further revisions to the hours of required training for either the dealer courses or supervisory courses are not necessary or appropriate at this time.

COMMENT: The Division of Gaming Enforcement states that it encourages the adoption of the rules and amendments.

RESPONSE: Accepted.

COMMENT: PDS suggests that N.J.A.C. 19:41-1.9(c)3ii(2) and (d)2iii(2) be modified to restrict acceptance of a dealer training certification in lieu of supervisory training certification only if such dealer training certification was issued within the last three years.

RESPONSE: The Commission disagrees. There is no apparent rational basis for choosing three years as the outside limits for this type of training. Any time limit on the completion of such a course, whether three years or some other length of time, would simply be an arbitrary limit. Rather, the Commission has determined that, for a period of one year from the operative date of this rule, dealer training certification will be accepted in lieu of the supervisory certification, regardless of when it was issued.

COMMENT: PDS suggests that the Commission consider instructor hours to be equivalent to supervisory hours gained as a boxperson, floorperson, pit boss or poker shift supervisor.

RESPONSE: The Commission disagrees. Actual hours of experience gained on the casino floor as a boxperson, floorperson, pit boss or poker shift supervisor has greater relevance to the operation of a casino than do hours of experience as an instructor.

COMMENT: PDS suggests that an individual certified to deal pai gow poker be required to have 80 hours of poker dealer training in order to obtain certification in the game of poker.

RESPONSE: The training requirements for persons certified to deal pai gow poker were not included in the proposal. The Commission intends to propose such standards in the near future and will consider this comment at such time.

COMMENT: CDS suggests that in addition to the hourly experiential qualification standards contained within N.J.A.C. 19:41-1.9, academic achievement must be adhered to by all gaming schools including uniform grades for transfers and reinstatements.

RESPONSE: The comment is beyond the scope of the proposal. These new rules and amendments pertain to experiential and training requirements, not to uniform grades utilized by the gaming schools.

COMMENT: CDS suggests that it is unreasonable to require subsequent game blackjack and baccarat students who do not possess previous training in a card game to complete 10 or 15 additional hours of training than those with card game training. CDS further suggests that there should be one set of minimum hourly training and instruction requirements for the blackjack and baccarat/minibaccarat dealer training courses.

RESPONSE: The Commission disagrees. The Commission believes that individuals who do not possess either training or experience in a card game need a minimum of additional training to ensure their ability to deal from a shoe and shuffle and deliver the cards appropriately.

COMMENT: CDS suggests that the reference to red dog contained within N.J.A.C. 19:44-8.3(a)2iii(2) is an error.

RESPONSE: Comment is accepted and inadvertent error is corrected by deleting "Red dog" since it is consistently deleted in the proposal to indicate that it is a variation game.

COMMENT: CDS suggests that the word "or" in N.J.A.C. 19:44-8.3(a)2iii(3) is an error.

RESPONSE: Comment is accepted and typographical error is corrected. The appropriate word is "and".

COMMENT: CDS agrees that, as proposed, it is appropriate to include an additional 10 training hours in the blackjack, baccarat/minibaccarat and pai gow poker supervisory training courses for those individuals who have not had previous card training or experience.

RESPONSE: Accepted.

COMMENT: CDS suggests that minibaccarat be reclassified as a variation game of baccarat instead of being considered a core game.

RESPONSE: The Commission does not agree that it would be necessary or appropriate to deem mini-baccarat a "variation game." The position endorsement issued by the Commission has historically been designated "baccarat/minibaccarat," and this is reflected in the new rules.

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

19:41-1.5A Position endorsements

(a) In accordance with N.J.S.A. 5:12-89c, 90d, 92b and 102, each casino key employee, casino employee, gaming school employee or junket representative license issued by the Commission shall be endorsed with the particular positions which the licensee is qualified to hold.

(b) An employee licensee with a position endorsement in a particular core game may also perform the functions of that position in any variation game thereof without further endorsement of his or her license, provided that he or she completes any additional minimum training required by the Commission for the variation game. For purposes of this subchapter:

1. Blackjack, craps, baccarat/minibaccarat, roulette, poker, pai gow poker and pai gow are "core games"; and

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2. The following are "variation games":

i. Sic bo and big six are variation games of blackjack, craps, baccarat/minibaccarat, roulette, poker, pai gow poker and pai gow;

ii. Red dog is a variation game of blackjack, baccarat/minibaccarat, poker, pai gow poker;

iii. Pokette is a variation game of roulette; and

iv. Double down stud is a variation game of poker and pai gow poker.

19:41-1.8 Experience and training requirements

(a) Each employee licensee or applicant shall establish by clear and convincing evidence that he or she meets the education, training and experience requirements for the particular position for which an application for endorsement has been filed.

(b) Any experience requirement set forth in N.J.A.C. 19:41-1.9 shall be satisfied only by employment in a legally operated gaming establishment in any jurisdiction or, where otherwise specified, in a licensed gaming school in this State.

(c) No experience shall be credited toward the requirements in N.J.A.C. 19:41-1.9 unless such experience is evidenced at the time of application by accurate records which indicate the following information:

1. The nature of the position;

2. The location of the gaming establishment or, where applicable, the gaming school;

3. Date of hire and date of termination;

4. Whether employment was full-time or part-time;

i. For purposes of this subchapter, "full-time" employment means employment for a minimum of 130 hours per month;

5. Whether the period of employment was continuous or intermittent; and

6. The number of hours worked, recorded in accordance with N.J.A.C. 19:43-9.4 or, for experience acquired in another jurisdiction, the months of employment and the approximate number of hours worked per month.

(d) For purposes of satisfying the experience requirements in N.J.A.C. 19:41-1.9:

1. One "month" means 130 hours; and

2. For purposes of satisfying any experiential requirement which is expressed in hours, no more than 130 hours of experience shall be credited for hours worked in any one calendar month unless such hours were recorded in accordance with N.J.A.C. 19:43-9.4.

(e) In addition to any other requirement set forth in this subchapter, no person shall be employed by a casino licensee to perform the duties and responsibilities of a "casino manager," "shift manager," "surveillance director," "surveillance supervisor" or "surveillance employee" as set forth in N.J.A.C. 19:41-1.6 and 1.7 unless he or she demonstrates knowledge of the basic rules of each authorized game offered by the casino licensee, evidenced by either:

1. Experience in that game; or

2. Completion of an approved training course in that game.

19:41-1.9 Qualification standards: table games positions

(a) The qualification standards for a "dealer" endorsement are as follows:

1. Satisfactory completion of an approved course of study in a gaming school in this State in the game for which endorsement is sought; or

2. At least five months of experience as a dealer or supervisor in the game for which endorsement is sought.

(b) The qualification standards for a "boxperson" endorsement are as follows:

1. Both of the following:

i. The experience or training required in (a) above for a "dealer" endorsement in craps; and

ii. At least 1,500 hours or 12 months of additional experience as a dealer, boxperson or floorperson in craps; or

2. At least 12 months experience as a dealer, boxperson, floorperson or pit boss in craps if such experience was acquired within the three years preceding application.

(c) The qualification standards for a "floorperson" endorsement are as follows:

1. ***For*** *[Blackjack]* ***blackjack***, baccarat/minibaccarat, roulette, poker***,*** *[or]* pai gow poker ***or pai gow*** as the first game in which "floorperson" endorsement is sought:

i. The experience or training required in (a) above for a "dealer" endorsement in the game for which the "floorperson" endorsement is sought, and either of the following:

(1) At least 1,500 hours or 12 months of additional experience as a dealer or supervisor for the game in which "floorperson" endorsement is sought; or

(2) At least 1,125 or nine months of additional experience as a dealer or supervisor for the game for which "floorperson" endorsement is sought, if such experience was acquired within the three years preceding application; or

ii. At least 12 months of experience as a dealer or supervisor in the game for which "floorperson" endorsement is sought, if such experience was acquired within the three years preceding application;

2. For craps as the first game in which "floorperson" endorsement is sought:

i. The experience or training required in (b) above for a "boxperson" endorsement; and

ii. Either of the following:

(1) At least 1,000 hours or eight months as a boxperson or floorperson in craps; or

(2) At least 750 hours or six months as a boxperson or floorperson in craps, if such experience was acquired within the three years preceding application;

3. For blackjack, baccarat/minibaccarat, roulette, poker***,*** *[or]* pai gow poker ***or pai gow*** as the second or subsequent game in which a "floorperson" endorsement is sought:

i. The experience or training required in (a) above for a "dealer" endorsement in the game in which floorperson endorsement is sought, and either:

(1) At least 500 hours or four months of additional experience as a dealer or supervisor in the game for which "floorperson" endorsement is sought; or

(2) At least 350 hours or three months of additional experience as a dealer or supervisor in the game for which "floorperson" endorsement is sought, if the applicant has a total of at least 1,500 hours of experience as a boxperson or supervisor in any one or more authorized games; or

ii. *[Both of the following:

(1) At]* ***For blackjack, baccarat/minibaccarat, roulette, poker or pai gow poker, at*** least 4,500 total hours or 36 months of experience as a supervisor *[or instructor]*, including experience in at least two authorized games*[;]**,* and ***either of the following:***

*[(2)]***(1)*** Completion of an approved supervisory course ***in the game in which "floorperson" endorsement is sought;*** or*[,]*

(2) *[for]* ***For*** any *[applicant for "floorperson" endorsement within one year from (the operative date of this rule)]* ***application filed on or before September 6, 1995***, completion of an approved dealer training course in the game in which "floorperson" endorsement is sought***, provided that the applicant enrolled in such course prior to September 6, 1994***;

4. An employee licensee with a "boxperson" endorsement may apply for a "floorperson" endorsement in blackjack, baccarat/minibaccarat, roulette, poker***,*** *[or]* pai gow poker ***or pai gow*** in accordance with the standards in (c)3 above; and

5. For craps as the second or subsequent game in which a "floorperson" endorsement is sought:

i. The experience or training required in (b) above for a "boxperson" endorsement; and

ii. Either of the following:

(1) At least 500 hours or four months of additional experience as a boxperson, floorperson or pit boss in craps; or

(2) At least 350 hours or three months of additional experience as a boxperson, floorperson or pit boss in craps, provided that the applicant has a total of at least 1500 hours as a floorperson or pit boss.

(d) The qualification standards for a "pit boss" endorsement are as follows:

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1. For the first game in which "pit boss" endorsement is sought:

i. A total of least 24 months of experience in one or more of the following positions:

(1) Boxperson, floorperson or pit boss in any authorized game;

(2) Poker shift supervisor;

(3) Poker room manager; or

(4) Instructor in a licensed gaming school in this State; and

ii. The experience or training required in (c)1 or (c)2 above for "floorperson" endorsement in the game for which "pit boss" endorsement is sought;

2. For blackjack, baccarat/minibaccarat, roulette**,** *[or]* pai gow poker ***or pai gow*** as the second or subsequent game in which "pit boss" endorsement is sought:

i. The experience or training required in (c)3i above for a "floorperson" endorsement in the game for which "pit boss" endorsement is sought; or

ii. Both of the following:

(1) The experience or training required in (c)3ii above for a "floorperson" endorsement in the game in which "pit boss" endorsement is sought; and

(2) At least 350 hours of additional experience as a dealer or supervisor in the game for which "pit boss" endorsement is sought; or

iii. *[Both of the following:

(1) At]* ***For blackjack, baccarat/minibaccarat, roulette, poker or pai gow poker, at*** least 3,000 hours or 24 months of experience as a pit boss, or 7,500 hours or 60 months of experience as a supervisor, including experience in at least two authorized games*[;]* ***,*** and ***either of the following:***

*[(2)]****(1)*** Completion of an approved supervisory training course ***in the game in which "pit boss" endorsement is sought;*** or*[,]*

(2) ***[for]*** ***For*** any *[applicant for "pit boss" endorsement within one year from (the operative date of this rule)]* ***application filed on or before September 6, 1995***, completion of an approved dealer training course in the game in which "pit boss" endorsement is sought***, provided that the applicant enrolled in such course prior to September 6, 1994***;

3. For craps as the second or subsequent game in which "pit boss" endorsement is sought;

i. The experience or training required in (c)4 above for a "floorperson" endorsement in craps as a second or subsequent game.

(e) The qualification standards for a "poker shift supervisor" endorsement are as follows:

1. Both of the following:

i. At least 3,000 hours or 24 months of experience as a floorperson or pit boss in blackjack, baccarat/minibaccarat, red dog, poker or pai gow poker; and

ii. At least 12 months of experience as a dealer, floorperson or manager in poker; or

2. Both of the following:

i. At least 3,000 hours or 24 months of experience as a pit boss, or 7,500 hours or 60 months of experience as a supervisor, including experience in at least two authorized games; and

ii. Completion of an approved supervisory training course; or

3. Both of the following:

i. The experience or training required in (c)1 above for a "floorperson" endorsement in poker; and

ii. At least 4,500 hours of experience as a boxperson, floorperson, pit boss, poker shift supervisor or poker room manager, including at least 3,000 hours as a floorperson in poker.

(f) Notwithstanding the above:

1. An applicant for a "boxperson," "floorperson," "pit boss" or "poker shift supervisor" endorsement may satisfy up to one-fourth of the experiential requirements set forth in (b), (c), (d) or (e) above with experience in a variation of the game in which endorsement is sought, as follows:

i. For endorsement in any game, credit equal to one-third of the total hours or months of experience dealing or supervising Sic Bo or Big Six;

ii. For endorsement in blackjack, baccarat/minibaccarat, pai gow poker or poker, credit equal to the total hours or months dealing or supervising Red Dog;

iii. For endorsement in roulette, credit equal to the total hours dealing or supervising Pokette; and

iv. For endorsement in poker or pai gow poker, credit equal to the total hours or months dealing or supervising Double Down Stud; and

2. An applicant for "floorperson" endorsement may satisfy the experiential requirements in (c) above as follows:

i. For "floorperson" endorsement in any authorized game, credit equal to the total hours employed on the casino floor in assisting and orienting a new dealer in the game in which "floorperson" endorsement is sought;

ii. For "floorperson" endorsement in roulette, credit equal to the total hours or months of experience as a roulette chip mucker, provided that such experience was acquired subsequent to receiving a certificate of graduation in roulette from a licensed gaming school; and

iii. For "floorperson" endorsement in blackjack, craps, baccarat/minibaccarat, poker *[or]* **,*** pai gow poker*[,]* ***or pai gow*** credit equal to one-third of the total hours or months of experience as a roulette chip mucker, provided that such experience was acquired subsequent to receiving a certificate of graduation in roulette from a licensed gaming school.

(g) The qualification standards for a "shift manager" endorsement are as follows:

1. A thorough knowledge of each authorized game, evidenced by any one of the following:

i. Experience in that game;

ii. Completion of an approved supervisory training course in that game; or

iii. Completion prior to (the operative date of this rule) of an approved dealer training course in that game;

2. A total of at least 48 months of experience dealing or supervising one or more authorized games, including at least 12 months of experience as a pit boss or table games executive; and

3. Qualification in accordance with (d)1 and (d)2 above for "pit boss" endorsement in a first and at least one subsequent game.

(h) The qualification standards for a "casino manager" endorsement are as follows:

1. A thorough knowledge of each authorized game, evidenced by any one of the following:

i. Experience in that game;

ii. Completion of an approved supervisory training course in that game; or

iii. Completion prior to (the operative date of this rule) of an approved dealer training course in that game;

2. A total of at least 60 months of experience dealing or supervising one or more authorized games, including at least 24 months of experience as a pit boss or table games executive; and

3. Qualification in accordance with (d)1 and (d)2 above for "pit boss" endorsement in a first and at least one subsequent game.

19:44-5.2 Establishment of thorough knowledge of regulations

(a) In addition to the requirements set forth in N.J.A.C. 19:44-5.1, no natural person shall be employed in the following positions unless he or she shall have first established that he or she has a thorough knowledge of the regulations of the Commission relevant to the position and that:

1. (No change.)

2. In the case of an instructor, he or she has had not less than two years of experience in a position identical to or closely related to that about which he or she will instruct;

i. If the instructor will teach a supervisory training course pursuant to N.J.A.C. 19:44-8.6, such experience shall include at least one year of experience as a supervisor in the game about which he or she will instruct;

3.-4. (No change.)

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19:44-8.3 Minimum hours

(a) Any training or instruction designed to prepare a student for employment as a dealer shall satisfy the following minimum requirements:

1. For a student being trained to deal a first game the following minimum hours of training and instruction shall be required:

i. 160 hours to deal blackjack;

ii. 200 hours to deal baccarat and minibaccarat;

iii.-vii. (No change.)

2. For a student being trained to deal a second or subsequent game the following minimum hours of training and instruction shall be required:

i. For a student certified to deal blackjack:

(1)-(2) (No change.)

(3) 80 hours to deal baccarat and minibaccarat;

(4) 210 hours to deal pai gow;

(5) 70 hours to deal pai gow poker; and

(6) 100 hours to deal poker.

ii. For a student certified to deal roulette:

(1) (No change.)

(2) 95 hours to deal blackjack;

(3) 95 hours to deal baccarat and minibaccarat;

(4) (No change.)

(5) 85 hours to deal pai gow poker; and

(6) 115 hours to deal poker.

iii. For a student certified to deal craps:

(1) (No change.)

(2) 95 hours to deal blackjack *[and red dog]*;

(3) 95 hours to deal baccarat *[or]* ***and*** minibaccarat;

(4) (No change.)

(5) 85 hours to deal pai gow poker; and

(6) 115 hours to deal poker.

iv. For a student certified to deal baccarat:

(1)-(2) (No change.)

(3) 80 hours to deal blackjack;

(4) 210 hours to deal pai gow;

(5) 70 hours to deal pai gow poker; and

(6) 100 hours to deal poker.

v. For a student certified to deal poker:

(1) 180 hours to deal craps;

(2) 120 hours to deal roulette;

(3) 85 hours to deal blackjack;

(4) 90 hours to deal baccarat and minibaccarat;

(5) 210 hours to deal pai gow; and

(6) 45 hours to deal pai gow poker.

vi. (No change in text.)

(b) (No change.)

(c) A supervisory training course pursuant to N.J.A.C. 19:44-8.6 shall include the following minimum hours of training and instruction:

1. For a student holding the appropriate license and position endorsement required to supervise blackjack, baccarat, minibaccarat, pai gow poker or poker:

i. 60 hours to supervise blackjack;

ii. 60 hours to supervise baccarat and minibaccarat;

iii. 55 hours to supervise pai gow poker;

iv. 80 hours to supervise poker; and

v. 95 hours to supervise roulette; or

2. For a student holding the appropriate license and position endorsement required to supervise roulette or craps:

i. 70 hours to supervise blackjack;

ii. 70 hours to supervise baccarat and minibaccarat;

iii. 65 hours to supervise pai gow poker;

iv. 90 hours to supervise poker; and

v. 95 hours to supervise roulette.

19:44-8.6 Supervisory training course

(a) A course designed to prepare a student for employment as a floorperson or pit boss in a particular second or subsequent game or as a poker shift supervisor pursuant to N.J.A.C. 19:41-1.9(c)3, (d)2 or (e)2 shall include the minimum hours of training and instruction required by N.J.A.C. 19:44-8.3(c) including, at a minimum, training and instruction which addresses the following for the particular game:

1. The rules of the game;

2. The handling of customer disputes;

3. Methods of cheating and marking cards;

4. Supervisory concerns; and

5. Simulated casino experience.

(b) For purposes of N.J.A.C. 19:44-8.4, no student shall be deemed to have satisfactorily completed a supervisory training course pursuant to (a) above unless he or she:

1. Holds the appropriate license and position endorsement required to supervise a first game and at least one subsequent game; and

2. Satisfied the supervisory experience requirements set forth in N.J.A.C. 19:41-1.9(c)3ii(1), (d)2iii(1) or (e)2i.

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PUBLIC NOTICES

COMMUNITY AFFAIRS

(a)

DIVISION OF CODES AND STANDARDS

Notice of Public Hearing Energy Subcode

Take notice that the New Jersey Department of Community Affairs will hold **a public hearing**, pursuant to section 304 of the Energy Policy Act of 1992, to elicit public comment concerning possible revision of the energy subcode adopted at N.J.A.C. 5:23-3.18 so that it will meet or exceed the CABO Model Energy Code, 1992. The energy subcode now in effect includes the BOCA National Energy Conservation Code/ 1993 and the Illuminating Engineering Society's standard known as LEM-1, 1982, "IES Recommended Procedure for Lighting Power Limit Determination."

The hearing will be held on Monday, October 3, 1994, beginning at 1:00 P.M., in the New Home Warranty Conference Room, on the first floor, Building #3, 3131 Princeton Pike, Lawrenceville, New Jersey. A report on the hearing, together with a statement of the Department's intentions regarding any revision of the energy subcode, will be forwarded to the U.S. Department of Energy to fulfill New Jersey's obligation under the Energy Policy Act of 1992.

ENVIRONMENTAL PROTECTION

(b)

GREEN ACRES PROGRAM

Notice of Availability of Loan and Grant Funds and Application Deadline Green Trust Local Assistance Program

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5, and 34.6, the Department of Environmental Protection hereby announces the availability of the following state loan and grant funds.

A. Name of program: Green Trust Local Assistance Program.

B. Purpose: The purpose of this program is to provide low interest (two percent) loans and, in some cases, partial grants to municipal and county governments for the acquisition of land and the development of outdoor recreation facilities for conservation and recreation purposes.

C. Amount of money in the program: $10 million, with additional funds potentially becoming available due to loan repayments and project withdrawals.

D. Individuals or organizations who may apply for Green Trust funding: Municipal and county governments in the State of New Jersey.

E. Procedure for application: Application packages may be requested from:

Bureau of Green Trust Management
Green Acres Program
CN 412
Trenton, NJ 08625-0412

F. Address of the division, office, or official receiving the application: Same as above.

G. Dates applications will be accepted: Applications must be submitted by October 31, 1994.

H. Dates by which applicant shall be notified of preliminary approval: Applicants shall receive notice of preliminary approval in January, 1995.

(c)

DIVISION OF SOLID WASTE MANAGEMENT

Solid Waste Management State Plan Update: 1993-2002 Notice of Postponement of Adoption of Section III: Statewide Sludge Management Plan Update

DEPE Docket Number 43-93-07

Take notice that the Solid Waste Management State Plan Update: 1993-2002, Section III: Statewide Sludge Management Plan Update (hereafter SSMP Update), released for public comment in September 1993 (see 25 N.J.R. 4336(c)) has been withdrawn from consideration for adoption at this time by the Department of Environmental Protection (Department). The Department will continue to review the SSMP Update and will release a revised draft SSMP Update for public comment in 1995.

The Department will mail copies of the revised draft SSMP Update to all those who participated in the public review and comment process for the draft SSMP Update released in September 1993. In addition, the Department will mail copies to all those on standard mailing lists maintained by the Department, to every municipality, to all county solid waste management offices, to all sludge treatment and processing facilities in New Jersey and to all libraries in the State's central repository system.

Individuals wishing to be on the mailing list to receive the revised draft SSMP Update, when available, may call or write:

Bureau of Medical Waste, Residuals Management and Statewide Planning
Division of Solid Waste Management
840 Bear Tavern Road, CN 414
Trenton, NJ 08625
(609) 530-8599

(d)

GREEN ACRES PROGRAM

Notice of Public Hearing on the Proposed Sewer Easement on Lands located within the Pigeon Swamp State Park

Take notice that the State of New Jersey, Department of Environmental Protection, will hold **a public hearing** to seek comments on the proposed easement on the following State owned land:

Lands located within the Pigeon Swamp State Park (Block 18, Lots 20.01 and 22.01) as shown on the current tax map of the Township of South Brunswick, County of Middlesex.

This land was acquired with 1974 Green Acres Bond Funds.

The applicant seeks this easement for the installation of a gravity sanitary sewer line to replace an existing pump station.

The **public hearing** will be held on:

Friday, October 7, 1994 at 2:00 P.M. at the
South Brunswick Municipal Building located in
Monmouth Junction, New Jersey

Persons wishing to make oral presentation are asked to limit their comments to a five minute time period. Presenters should bring a copy of their comments to the hearing for use by the Department. The hearing records will be kept open for a period of seven days following the date of the public hearing so that additional written comments can be received.

Interested persons may submit written comments until October 14, 1994:

Thomas Wells, Administrator
Green Acres Program
Department of Environmental Protection
CN 412
Trenton, New Jersey 08625

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(a)

PINELANDS COMMISSION

Notice of Receipt of Petition for Rulemaking Pinelands Land Capability Map N.J.A.C. 7:50-5.3(a)24

Petitioner: Avalon Golf & Development, Inc.
Authority: N.J.S.A. 13:18A-65.

Take notice that on July 25, 1994, the above-noted petitioner filed a complete rulemaking petition with the Pinelands Commission requesting an amendment to the Pinelands Comprehensive Management Plan. This amendment would result in a revision to the Pinelands Area Jurisdiction Boundaries Map, adopted pursuant to N.J.A.C. 7:50-5.3(a)1, and the Official Map of the Pinelands, adopted pursuant to N.J.S.A. 13:18A-11c, to amend the Pinelands National Reserve boundary to exclude approximately 173.32 acres of land in Middle Township, Cape May County from the Pinelands National Reserve.

If approved, this amendment would also result in the need for a revision to N.J.A.C. 7:50-5.3(a)24 to exclude the above referenced property from the Pinelands Land Capability Map. The Land Capability Map graphically depicts the Pinelands Management Areas which form the basis upon which different land uses and the intensity of those uses are permitted in the Pinelands. This property is depicted within a Pinelands Rural Development Area. The standards governing permitted land uses and intensities of use are set forth in N.J.A.C. 7:50-5, specifically N.J.A.C. 7:50-5.26 for Rural Development Areas.

The lands subject to the petition are currently located within the Pinelands National Reserve but outside of the State Pinelands Area. As such, the Pinelands Comprehensive Management Plan includes land use and development policies governing the future use and development of the properties, but the Pinelands Commission does not exercise regulatory jurisdiction to implement the Plan's rules. Instead, the Department of Environmental Protection, pursuant to a memorandum of agreement with the Pinelands Commission, takes the Comprehensive Management Plan's land use and development policies and the Pinelands Land Capability Map into consideration in administering the Coastal Area Facility Review Act. The memorandum of agreement requires that coastal development in the Pinelands National Reserve be consistent with the "intent, policies and objectives" of both the Federal and State Pinelands legislation (N.J.A.C. 7:7E-3.42).

The properties subject to the petition total approximately 173.32 acres and are generally located in the northeasterly section of Middle Township. Included are: Block 114, Lots 6.02, 7, 8, 9, 10.01, 10.02, 10.03, 10.04, 11.01, 12, and 13. The properties are bounded to the east by the Garden State Parkway, to the West by U.S. Highway Route 9, to the north by the State of New Jersey, Department of Agriculture, Plant Materials Center (known as Block 114, Lot 5.01), and to the south by a line drawn approximately 530 linear feet south of the intersection of U.S. Highway Route 9 and Siegtown Road (that is, the lot line separating Lot 14 from Lot 13 of Block 114). The properties generally comprise the Avalon Country Club.

As presently depicted on the Pinelands Area Jurisdiction Boundaries Map, the Official Map of the Pinelands, and the Pinelands Land Capability Map, the Pinelands National Reserve boundary in the vicinity of the petitioner's properties, proceeds easterly on Goshen-Swainton Road, then southeasterly on Siegtown Road to its intersection with U.S. Highway Route 9, then south on U.S. Highway Route 9 to its intersection with the Garden State Parkway, then north along the Garden State Parkway.

The petitioner requests that the above noted Pinelands Commission maps be amended to conform with the petitioner's interpretation of the Pinelands National Reserve Boundary Map which was adopted by Congress in P.L. 95-625 (November 10, 1978). P.L. 95-625, the National Parks and Recreation Act of 1978, established the Pinelands National Reserve consisting of an approximately 1,000,000 acre area which, according to the Act, "was generally depicted on a map entitled 'Pinelands National Reserve Boundary Map' numbered NPS/80,011A, dated September 1978."

As proposed, the amendment would exclude approximately 173.32 acres comprising the above referenced block and lots in Middle Township from the Pinelands National Reserve boundary. Such an amendment would result in approximately 17 acres of land located in the Pinelands National Reserve that would be geographically disconnected from the rest of the Pinelands National Reserve. The block and lots which would comprise this geographically disconnected "island" are as follows: Block 114, Lots 14, 15, 16, 17.01, 17.02, 18 and 19. If this petition is recommended for approval, these additional properties would likely be recommended for exclusion from the Pinelands National Reserve.

The National Parks and Recreation Act of 1978 required the Secretary of the Interior to call upon the Governor of the State of New Jersey to establish a planning entity to develop a comprehensive management plan for the Pinelands National Reserve. The plan was to include a "map showing the detailed boundary of the Pinelands National Reserve" (Section 502(f)(2) of P.L. 95-625). In response to the Federal legislation, the New Jersey Legislature passed the Pinelands Protection Act. That Act required the Pinelands Commission to adopt an official map for the region which included a detailed boundary of the Pinelands National Reserve. The Legislature further directed the Pinelands Commission to prepare a comprehensive management plan for the Pinelands which also included a detailed boundary map of the Pinelands National Reserve.

The official map was adopted by the Pinelands Commission and formed the basis for the boundary maps contained in the Pinelands Comprehensive Management Plan. The maps in the Pinelands Plan are identical to the official map with respect to the boundaries of the Pinelands National Reserve. The Secretary of the Interior approved the Pinelands Comprehensive Management Plan and, as such, approved these maps. The Department of the Interior has stated that the maps in the Pinelands Comprehensive Management Plan exhibit the detailed boundary of the Pinelands National Reserve as required under the National Parks and Recreation Act of 1978.

The petitioner argues that the amendment is justified to conform the maps prepared by the Pinelands Commission with the Pinelands National Reserve Boundary Map Number NPS/80, 011A, dated September, 1978. The petitioner asserts that a reasonable interpretation of the Pinelands National Reserve Boundary Map does not result in this property being included in the Pinelands National Reserve and that the petitioner should not be subject to Pinelands Commission land use and development policies in the future.

Take further notice that, pursuant to N.J.A.C. 7:50-7, this petition is being reviewed by the Executive Director and the staff of the Pinelands Commission for the purpose of formulating a recommendation to the Pinelands Commission as to how it should respond.

Interested persons who wish to comment on the petition before the Executive Director completes his review may do so by submitting written comments on or before October 14, 1994. Comments should be addressed to:

John C. Stokes
Assistant Director
Pinelands Commission
P.O. Box 7
New Lisbon, New Jersey 08064

A copy of the petition and supporting documents are on file at the offices of the Pinelands Commission, Springfield Road, Pemberton Township, New Jersey and are available for inspection between 9:00 A.M. and 5:00 P.M. on regular business days.

A **public meeting** to accept written and oral comments on the petition will be scheduled prior to October 14, 1994. Notice of the meeting will be provided to newspapers serving the Pinelands.

Additional public notice of the petition will be provided by the petitioner to the following individuals and organizations: the secretaries of the Cape May County Planning Board, Middle Township Planning Board, and the Middle Township Environmental Commission, and; any landowners within 200 feet of any boarder of the petitioner's property. The petitioner shall also arrange for the publication of a copy of this notice, at least once, in a newspaper having general circulation in the area, and by conspicuous posting of a copy of this notice on any parcel subject to the petition pursuant to N.J.A.C. 7:50-6.154.

The Pinelands Commission will not consider or propose an amendment to the Comprehensive Management Plan until it reviews the Executive Director's recommendation. After consideration, the Commission shall determine whether or not to proceed with a rulemaking proposal pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 7:50-7.

The Pinelands Commission is scheduled to decide whether to proceed with a rulemaking proposal at its November 4, 1994 regular monthly meeting. If this matter is rescheduled to occur later than November 4, 1994, a notice will be published specifying the date within which the Pinelands Commission will take action on the petition.

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(a)

OFFICE OF LAND WATER PLANNING

Amendment to the Monmouth County Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection (NJDEP) is seeking public comment on a proposed amendment to the Monmouth County Water Quality Management (WQM) Plan. This amendment proposal was submitted on behalf of the Western Monmouth Utilities Authority (WMUA). The amendment would update the WMUA Wastewater Management Plan (WMP) in Marlboro and Manalapan Townships. The WMP identifies a sewer service area expansion to the Pine Brook Sewage Treatment Plant (STP) to serve the Samaritan Center site in Manalapan and the Marlboro Manse, Marlboro Hillside Apartments, and Marlboro YMCA sites in Marlboro with a projected wastewater planning flow of 108,000 gallons per day for these sites. This brings the projected wastewater planning flow need of the Pine Brook STP to 8.918 million gallons per day (MGD). The present existing and committed flow to the Pine Brook STP is 5.520 MGD with a NJPDES permitted capacity of 6.6 MGD.

As part of this amendment, the WMP document has been updated for the Pine Brook STP service area flows. In addition, some minor boundary shifts have been made to the overall sewer service area map for the Pine Brook STP. The Raceway Park Site in Oldbridge Township, Middlesex County, has been shown as service area of the Pine Brook STP as identified in an Administrative Consent Order with the NJDEP in 1992. The Existing and proposed Service Areas Map also identifies the previously unmapped but revised sewer service area boundary with the Bayshore Regional Sewerage Authority as identified by an agreement between the two authorities and a previously adopted WQM Plan amendment.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

This notice is being given to inform the public that a plan amendment has been propsed for the Monmouth County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEP, Office of Land and Water Planning, CN423, 401 East State Street, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Land and Water Planning at (609) 633-1179.

Interested persons may submit written comments on the proposed amendment to Dr. Daniel J. Van Abs, at the NJDEP address cited above with a copy sent to Mr. Kevin F. Toolan, Western Monmouth Utilities Authority Engineer, T & M Associates, Eleven Tindall Road, Middletown, New Jersey 07748. 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 persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Dr. Van Abs at the NJDEP address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

(b)

SITE REMEDIATION

Notice of Withdrawal of List of Priority Contaminated Sites

Take notice that the Department of Environmental Protection hereby withdraws the list of priority contaminated sites published at 26 N.J.R. 259(c) on January 3, 1994.

The Department is in the process of developing rules which will define how the Department will establish a remedial priority score for each contaminated site and how the Department will rank contaminated sites. The Department had attempted by the publication of the January 3 Notice to inform the public of which sites the Department considered to be priority sites using a pre-draft version of those rules. Based upon the public input on the publication of the Department's "Notice of Opportunity for Interested Party Review of the Remedial Priority Scoring System", 25 N.J.R. 4551(c), October 4, 1993 and its own internal review of the methods used to identify priority sites, the Department has concluded that it is in the best interest of the public to withdraw at this time the Notice of Priority Contaminated Sites as published in the January 3, 1994 New Jersey Register.

The Department will continue to address contaminated sites consistent with the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., in order to ensure the protection of human health and the environment. Unless otherwise informed by the Department following this publication, anyone interested in conducting the remediation at any of the sites included on the January 3 New Jersey Register Notice with Department oversight may do so under a memorandum of agreement pursuant to N.J.A.C. 7:26C-3.

For more information concerning the remediation of any of these sites, contact Ronald T. Corcory, Assistant Director, Responsible Party Cleanup Element at (609) 633-0719.

(c)

NEW JERSEY LOW-LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY SITING BOARD

Notice of Public Meetings, Hearings and Availability of the Proposed Voluntary Siting Plan for Locating a Low-Level Radioactive Waste Disposal Facility in New Jersey

Take notice that the New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board and the Radioactive Waste Advisory Committee will hold a series of public information meetings, open houses and hearings to advise residents of and seek public input on the Proposed Voluntary Siting Plan for Locating a Low-level Radioactive Waste Disposal Facility in New Jersey. The public comment period is June 6 through October 28, 1994. All comments must be submitted to the Siting Board by Friday, October 28, 1994.

The purpose of these meetings is to 1) share information about low level radioactive waste and how the Siting Board proposes to use a voluntary approach to site a disposal facility for waste generated in the State, and 2) listen to comments and suggestions from New Jersey citizens on the Siting Board's proposed voluntary siting plan.

Informational meetings and public hearings are scheduled at various locations around the State during this public comment period. The first two informational meetings were held on June 22, 1994 in North Branch, New Jersey and July 19, 1994 in West Deptford, New Jersey. Following is a list of public meetings and hearings to obtain information and provide comment in September and October:

Monday, September 12, 1994

Georgian Court College Raymond Hall Complex North Dining Room 900 Lakewood Avenue Lakewood, New Jersey 08701	Informational Meeting/Open House Afternoon session Evening session	 3:00-5:00 P.M. 7:00-9:00 P.M.

Thursday, Septemer 22, 1994

Hamilton Area YMCA 1315 Whitehorse-Mercerville Rd. Mercerville, New Jersey 08619	Informational Meeting/Open House Afternoon sesssion Evening session	 3:00-4:45 P.M. 7:00-9:00 P.M.

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Monday, October 3, 1994
Dover Medical Center — Info Meeting/Open House 3:00-5:00 P.M.
Conference Room A, 4th Floor — Public Hearing 7:00 P.M.
24 Jardine Street
Dover, New Jersey 07801

Thursday, October 13, 1994
Atlantic County Library — Info Meeting/Open House 3:00-5:00 P.M.
40 Farragut Avenue — Public Hearing 7:00 P.M.
Mays Landing, New Jersey 08330

Copies of the Proposed Voluntary Siting Plan for Locating a Low-Level Radioactive Waste Disposal Facility in New Jersey are available from the NJ Low-level Radioactive Waste Disposal Facility Siting Board, Station Plaza III, 4th Floor, 44 South Clinton Avenue, CN-410, Trenton, New Jersey 08625, 609-777-4247. You may obtain directions to the Information Meetings and Hearings and confirm the date and location by contacting the Siting Board Office.

(a)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Ocean County Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection (NJDEP) is seeking public comment on a proposed amendment to the Ocean County Water Quality Management (WQM) Plan. This amendment proposal was submitted on behalf of the Jackson Township Municipal Utilities Authority. The proposed amendment would modify the sewer service area of the Ocean County Utilities Authority's Northern Water Pollution Control Facility to serve an area within the central portion of the authorities district. The proposed sewer service area will be expanded from the existing sewer service area of the adopted October 28, 1987 (amended June 28, 1990, May 18, 1992, and August 19, 1992) Jackson Township Wastewater Management Plan, to include the service areas of existing treatment facilities at the Carl Goetz School and Six Flags Great Adventure Park. The Goetz School and Six Flags Great Adventure Park will be served by a proposed force main.

The proposed force main will run from the Jackson Mills area westerly along Trenton-Lakewood Road (Route 526), then along Patterson Road to Anderson Road, then to Burke Tavern Road and finally southerly, on Burke Tavern Road, to the Six Flags Great Adventure Park property. The existing sewage treatment plant located within the Six Flags Great Adventure Park property will be abandoned and replaced with a pump station.

The Carl Goetz School and Six Flags Great Adventure Park, located in the central portion of the Ocean County Utilities Authority's district (but proposed to be served by the Authority's Northern Water Pollution Control Facility located in the northern portion of their district), will be the only two properties (as specifically identified below) able to utilize the proposed force main and associated sewerage infrastructure. Properties outside of the proposed expanded sewer service area, but within the planning area for the Jackson Township Wastewater Management Plan, and the Central Water Pollution Control Facility may not connect to the proposed force main regardless of proximity to the force main, unless: a) a Water Quality Management Plan amendment is approved by the Department; b) there is a documented failing on-site septic system where repair or replacement is infeasible or impracticable; or c) a Department Administrative Consent Order is being enforced specifically directing the flow to the Northern Water Pollution Control Facility to remediate a public health problem.

Five existing New Jersey Pollutant Discharge Elimination System (NJPDES) facilities are to be abandoned when the proposed force main becomes available: Fountain Head Mobile Home Park (NJPDES #NJ0035653) and Oak Tree Mobile Home Park (NJPDES #NJ0031267) are located within the current existing sewer service area of the Northern Pollution Control Facility; and, the Carl Goetz School (NJPDES #NJ0069663), and Six Flags Great Adventure Park (NJPDES #NJ0026263 and #NJ0052345) located in the proposed sewer service area of the Northern Water Pollution Control Facility being addressed in this proposed amendment.

The proposed sewer service area expansion of the Northern Water Pollution Control Facility is solely limited to the following blocks, lots, and flow: Block 1, lots 2, 3.01, 3.02, 3.03, 3.04, 4, 5, 6, 7, 8, 9, 10.01, 10.04, 10.05, 11.02, 11.03, 11.04, 12, 21.02, 27.01, 51.01, 51.02, 51.03, 52.02, 58.01, 58.02, 58.04, 58.09, 59, 61, 76, 77, and 80; Block 3.01, lot 20.02; Block 5.01, lot 2; Block 6, lot 5; and Block 7, lot 11.04 (Six Flags Great Adventure Park, discharging a wastewater flow of 1.50 MGD); Block 1, lots 27.02 and 27.04 (Jackson Township Municipal Utilities Authority within the Six Flags Great Adventure Park property); and Block 96.01, lots 41, 46, 47, 48, 49, 54.02, and 55 (Carl Goetz School, discharging a wastewater flow of 0.03 MGD).

Adoption of this amendment in no way guarantees the identified blocks and lots the ability to connect to the proposed force main without providing consistency with other regulations under federal or State statutes or rules.

Further major expansions to the proposed sewer service area within the Jackson Township Wastewater Management Planning area, other than for the purpose of connecting properties with failing on-site septic systems as noted above, will be approved by the Department only upon completion of a watershed management plan for the portion of the Jackson Township Wastewater Management Planning area that includes the Toms River and Metedeconk River. The overall Watershed Management Plan will provide guidance on the protection of the Toms River, Metedeconk River, and other relevant water bodies from water quality impairment generated by new development in the area as required by the Surface Water Quality Standards and other relevant regulations of the Department. The Department anticipates that the watershed management planning process will take no less than three years and no more than five, starting during the State Fiscal Year 1995. Recognizing the potential impact on landowners, the Department may decide to allow amendments once planning has progressed far enough to provide clear guidance, but before adoption of the Watershed Management Plan. Minor amendments will be considered on a case-by-case basis. This process does not modify or annul the currently approved sewer service area for Jackson Township. This planning venture shall provide extensive opportunities for involvement of the Jackson Township Municipal Utilities Authority, Ocean County Utilities Authority, Ocean County Planning Board, and others, to promote responsible planning for future wastewater and water resource management in Ocean County.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plant); and development in wetlands, flood prone area, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

This notice is being given to inform the public that a plan amendment has been proposed for the Ocean County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the Ocean County Planning Board, Court House Square, CN 2191, Toms River, New Jersey 08754; and the NJDEP, Office of Land and Water Planning, 401 East State Street, CN-423, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Land and Water Planning at (609) 633-1179.

Interested persons should submit written comments on the proposed amendment to Mr. Alan Avery, Ocean County Planning Board, at the address cited above. A copy of the comments should be sent to Dr. Daniel J. Van Abs, Office of Land and Water Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this 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 or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this notice to Mr. Van Abs at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

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OFFICE OF LAND AND WATER PLANNING

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection (NJDEP) is seeking public comments on a proposed amendment to the Tri-County Water Quality Management (WQM) Plan. This amendment proposal was submitted on behalf of Tallpines Daycamp, Inc. The amendment would identify a new discharge to ground water of 10,000 gallons per day at Block 10801, Lots 21 and 22 of Monroe Township, Gloucester County. This new discharge would serve the Tallpines Campground, a proposed children's day camp weekdays and family camp on weekends. This discharge would only remain operational at this flow rate from June through August. The remainder of the year, the site will be used as a children's preschool/dayschool facility. During these months, the projected wastewater flow at the site will be 2,250 gallons per day. The project site lies within a Pinelands Agricultural Production Area and appears to be consistent with the Pinelands Comprehensive Management Plan.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

This notice is being given to inform the public that a plan amendment has been proposed for the Tri-County WQM Plan. All information related to the WQM Plan, and the proposed amendment is located at the NJDEP, Office of Land and Water Planning, CN423, 401 East State Street, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Land and Water Planning at (609) 633-1179.

Interested persons should submit written comments on the proposed amendment to Dr. Daniel J. Van Abs, at the NJDEP address cited above with a copy sent to Mr. Francis Pandullo, 2100 Wesley Avenue, Ocean City, New Jersey 08226. 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 persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment (or extend the public comment period in this notice up to 30 additional days). These requests must state the nature of their issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of the date of this notice to Dr. Van Abs at the NJDEP address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

HEALTH

(b)

THE COMMISSIONER

Notice of Revision of Schedule for Review of Certificate of Need Applications

Home Health Agencies

Take notice that on April 29, 1994, a notice of the schedule for review of certificate of need applications for the establishment or expansion of home health agencies was issued (see 26 N.J.R. 2486(a)). It has come to the attention of the Department that, due to the volume of applications received, additional time is needed by Local Advisory Board and Department of Health staffs to conduct reviews. Therefore, the schedule is revised as follows:

Date completeness review decision issued: November 1, 1994

Date Local Advisory Board Recommendation to State Health Planning Board and to the Commissioner of Health: December 16, 1994

Date State Health Planning Board Recommendation to the Commissioner of Health: February 2, 1995

Any questions concerning this matter should be directed to Ms. Mary Lou Holl, Chief, Certificate of Need Program, at (609) 292-6552.

(c)

DIVISION OF ALCOHOLISM, DRUG ABUSE AND ADDICTION SERVICES

Notice of the Availability of the Application for the Prevention and Treatment of Substance Abuse Block Grant; Federal Fiscal Year 1994

Take notice that the Division of Alcoholism, Drug Abuse and Addiction Services has submitted the Application for the Prevention and Treatment of Substance Abuse Block Grant; Federal Fiscal Year 1994 including Supplemental Revisions to the Federal Center for Substance Abuse Treatment within the Substance Abuse and Mental Health Services Administration of the Department of Health and Human Services.

The Division of Alcoholism, Drug Abuse and Addiction Services is making this Application and Revisions public in order to facilitate comment from any person (including any Federal or other public agency). Such comment will be considered in developing and preparing the Application for the Prevention and Treatment of Substance Abuse Block Grant; Federal Fiscal Year 1995.

To request a copy of the Application and Revisions write to:

Terrence O'Connor, Assistant Commissioner
New Jersey Department of Health
Division of Alcoholism, Drug Abuse and Addiction Services
CN 362, 129 East Hanover Street
Trenton, New Jersey 08625
Or, by telephone: (609) 292-8949

To provide comment concerning the Application and Revisions write to the Division of Alcoholism, Drug Abuse and Addiction Services not later than 4:30 P.M., October 19, 1994.

HUMAN SERVICES

(d)

NEW JERSEY DEVELOPMENTAL DISABILITIES COUNCIL

Notice of Availability of Grant Funds
Title of Grant: Election Challenge 1994

Take notice that in accordance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Developmental Disabilities Council announces the availability of the following grant program funds:

A. Name of program: Election Challenge Grant 94.

B. Purpose: Funds are being made available to encourage the vote by people with developmental disabilities and their families. Developmental disabilities include autism, cerebral palsy, mental retardation, spina bifida, epilepsy, and head injury. The approach to encouraging the vote is up to the applicant.

C. Amount of available funding for the program: $25,000; up to four applicants will share the funds.

D. Qualifications: State, county, and local organizations are eligible to apply. Preference will be given to nonprofit organizations and to organizations demonstrating the capacity to mobilize people with developmental disabilities and their families. Pairs or groups of organizations are welcome to apply jointly.

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E. Procedure for eligible organizations to apply: Interested applicants may request an application by writing on their letterhead or calling:

Election Challenge Grant
c/o Rachel A. Hickson
NJ Developmental Disabilities Council
CN 700, 32 West State Street
Trenton, NJ 08625
(609) 292-3745

F. Address to which applications must be submitted: Same as above.

G. Deadline by which applications must be submitted: By close of business, August 22, 1994.

H. Date the applicant is to be notified of acceptance or rejection: September 1, 1994.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Notice of Action or Petition for Rulemaking Hospital Reimbursement: Charity Care Component

Petitioner: Members of the Hospital Alliance of New Jersey and Hackensack Medical Center, as represented by Sills, Cummis, Zuckerman, Radin, Tischman, Epstein & Gross.

Authority: P.L. 1992, c.160, commonly referred to as the Health Care Reform Act of 1992.

Take notice that on July 11, 1994, the New Jersey Department of Human Services, and the Essential Health Services Commission (referred to as the Commission), received a petition for rulemaking concerning the charity care subsidy contained in P.L. 1992, c.160, commonly referred to as the Health Care Reform Act of 1992. Notice of receipt of the petition was published in the August 15, 1994 New Jersey Register at 26 N.J.R. 3489(c).

Petitioner has requested that the Commission establish a "claims processing system to distribute the charity care subsidy." In the absence of such a (claims processing) system, the petitioner requests continuance of the disproportionate share hospital payments "based upon charity costs incurred by all hospitals in 1993." Petitioner also requests that no action be taken until there has been rulemaking activity under the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-2. Petitioner also raised other concerns relative to the process of determining eligibility for charity care and disbursement of funds based upon the charity care audit.

Since the petition has been received, the Department of Human Services, and the Essential Health Services Commission, have jointly filed an emergency rule and concurrent proposal amending N.J.S.A. 10:52-8.2 effective August 1, 1994 (see 26 N.J.R. 3485(a)). The emergency rule will enable payments to be made under the new allocation system. The petitioner may submit comments on the concurrent proposal. A copy of this notice will be mailed to the petitioner.

Interested persons may obtain a copy of the petition for rulemaking by writing to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN 712
Trenton, NJ 08625-0712

STANDARDS FOR RESIDENTIAL FACILITIES

In 1977, a significant amendment to Title XVI of the Social Security Act was enacted by the Congress, requiring each State to establish and enforce standards for residential facilities where significant numbers of SSI (Supplemental Security Income) recipients reside or are likely to reside. Commonly known as Keys Amendment, the statute requires each State's Title XX agency to make available for public review certain information about the standards and their enforcement in the Proposed and Final Services Plans. Final regulations detailing the State's responsibilities were published in the Federal Register on January 31, 1978. Recorded below, for each type of residential facility for SSI recipients in New Jersey, is the following information:

- A listing of the items in each standard; and
- The name and address of each standard-setting agency where interested individuals may obtain, without charge, a single copy of:
  - a complete set of standards for each type of facility;
  - the procedures used in the State to ensure enforcement of each standard;
  - the criteria for waiving each standard and a list of the names and addresses of the facilities and standards for which they have been granted waivers; and
  - the list giving the names and addresses of facilities in violation of a standard, and the details of each violation.

1. RESIDENTIAL HEALTH CARE FACILITIES SUMMARY OF STANDARDS

Summary of Standards
—Building Requirements
—Fire Protection
—Administration
—Personal Care Services
—Food and Food Service

Further information can be obtained from:

Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
300 Whitehead Road
Trenton, New Jersey 08625-0367

2. ROOMING AND BOARDING HOMES

Summary of Standards
—Administration and Enforcement
—Definitions
—Rights of Residents
—General Building Requirements
—Fire Safety
—Security
—Residents' Comfort
—Maintenance of Records
—Food and Laundry Service
—Other Personal Services
—Financial Services

Further information can be obtained from:

Bureau of Rooming and Boarding House Standards
New Jersey Department of Community Affairs
CN 800
Trenton, New Jersey 08625-0800

3. RESIDENTIAL CHILD CARE FACILITIES

Summary of Standards
—Introduction
—Legal Authority
—Organization and Administration
—Finance
—Program Services
—Staffing Requirements
—Physical Care of Children
—Leasing and Rental Requirements
—Transportation Requirements

4. GROUP HOMES FOR CHILDREN

—General Provisions
—Approval Procedures
—Administration
—Physical Facility Requirements
—Staff Requirements
—Program Requirements
—Health Requirements
—Transportation Requirements
—Adventure Activities
—Services for Pregnant and Parenting Adolescents

Further information for Residential Child Care Facilities and Group Homes:

Bureau of Licensing
Division of Youth and Family Services
New Jersey Department of Human Services
CN 717
Trenton, New Jersey 08625-0717

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5. FOSTER HOMES

Summary of Standards
—Age of Foster Parents
—Health of Foster Parents
—Income of Foster Parents
—Description of Foster Parents
—Citizenship for Foster Parents
—Marital Status of Foster Parents
—Working Parents
—Housing
—Sleeping Arrangements
—Family Size
—Discipline

Further information on Foster Homes can be obtained from DYFS Regional Offices or the Office of Program Operations:

Office of Program Operations
Division of Youth and Family Services
New Jersey Department of Human Services
CN 717
Trenton, New Jersey 08625-0717

6. PUBLIC AND PRIVATE INSTITUTIONS FOR THE DEVELOPMENTALLY DISABLED

Summary of Standards
—Administration Policies and Practices
—Resident Living Services
—Health Services
—Habilitation Services
—Support Services
—Research

The categories of standards for these two facilities are identical; specific requirements may vary.

7. FAMILY CARE HOMES AND SKILL DEVELOPMENT HOMES FOR THE DEVELOPMENTALLY DISABLED

Summary of Standards
—Location and Condition of Home
—Home Interior and Living Arrangements
—Administrative Policies and Practices
—Health Services
—Habilitation Services
—Physical Plant and Safety
—Care of the Individual

8. GROUP HOMES FOR THE DEVELOPMENTALLY DISABLED

Summary of Standards
—General Provisions
—Organization and Administration
—Advocacy Rights
—Habilitation Services
—Health Services
—Social Living Environment
—Supervised Apartments

Further information concerning standards for Institutions, Family and Skill Care Homes for the Developmentally Disabled and group homes can be obtained from:

Office of Licensing and Inspections
Division of Developmental Disabilities
New Jersey Department of Human Services
CN 726
Capital Center
Trenton, New Jersey 08625-0726

9. RESIDENTIAL DRUG TREATMENT FACILITIES

Residential Drug Treatment Facilities are licensed as Residential Health Care Facilities, and must meet the Board Home standards listed above. These additional types of standards also apply:

Summary of Standards
—General Requirements
—Auspices
—Organization and Delivery of Health Services and Medical Care Services
—Counseling
—Vocational Rehabilitation and Employment
—Supportive Services
—Pharmacy Services
—Dietary Services
—Medical Records
—Patient Care Statistics
—Financial Data
—Audit and Evaluation
—Patient Bill of Rights
—Sanitation

Further information can be obtained from:

Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
300 Whitehead Road
Trenton, New Jersey 08625-0367

10. RESIDENTIAL OPERATIONAL STANDARDS FOR GROUP HOMES FOR THE MENTALLY ILL

Summary of Standards
—General Provisions
—Licensing Process
—Division Responsibilities
—Residential Care Program
—Physical Plant
—Fire Safety
—Resident Complaint Procedures

Further information can be obtained from:

New Jersey Department of Human Services
Division of Mental Health and Hospitals
Bureau of Standards and Inspections
CN 727
2-98 East State Street
Trenton, New Jersey 08625-0727

(a)

OFFICE OF THE COMMISSIONER

Public Notice
Keys Amendment Certification

Take notice that the Keys Amendment to the Federal Social Security Act requires an annual certification by states that there are standards in facilities where significant numbers of Supplemental Social Security Income (SSI) recipients reside. The publication of a summary of standards is also required.

Three State departments have licensing and enforcement authority for facilities housing significant numbers of SSI residents in New Jersey. Each department maintains standards and enforces its own rules.

Within the Department of Human Services, three divisions license or otherwise regulate facilities housing a significant number of SSI recipients.

The Division of Developmental Disabilities licenses group homes, community care residences, and supervised apartment programs for persons with developmental disabilities. Comprehensive standards for each program have been developed and codified. Full text of the standards can be found in N.J.A.C. 10:44A and B, or by contacting the following office:

New Jersey Department of Human Services
Division of Developmental Disabilities
Office of Licensing and Inspections
CN 726
Trenton, New Jersey 08625-0726

The Division of Youth and Family Services maintains standards for both large residential and smaller community based facilities for clients under its jurisdiction. Specific programs include: foster care homes, residential child care facilities, group homes for children and victims of domestic violence, and teaching family homes. Full text of the standards can be found in N.J.A.C. 10:127 and 10:128, or by contacting the following office:

New Jersey Department of Human Services
Division of Youth and Family Services
Bureau of Licensing
CN 717
Trenton, New Jersey 08625-0717

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The Division of Mental Health and Hospitals licenses residential services which include group homes, family care homes, and supervised apartment programs for mentally ill adults and children. Comprehensive standards have been developed and codified as N.J.A.C. 10:39. A copy of the standards may be obtained by contacting the following office:

New Jersey Department of Human Services
Division of Mental Health and Hospitals
Bureau of Standards and Inspections
CN 727
Trenton, New Jersey 08625-0727

In all three Divisions, the standards are enforced through site visits conducted at least annually, time-limited corrective-action plans, and facility closure in the event of non-compliance.

The Department of Community Affairs licenses Rooming Houses (Class A) and Class B, C, D, and E Boarding Homes. The Bureau of Rooming and Boarding House Standards has a legitimate mandate to annually evaluate the physical and social conditions of all rooming and boarding houses as defined under N.J.S.A. 55:13B-1-16, the Rooming and Boarding House Act of 1979. Full text of the standards can be found in N.J.A.C. 5:27, or by contacting:

New Jersey Department of Community Affairs
Bureau of Rooming and Boarding House Standards
South Broad and Front Streets
CN 800
Trenton, New Jersey 08625-0800

The Department of Health licenses Residential Health Care Facilities and enforces standards through annual inspections. Full text of the standards can be found in N.J.A.C. 8:43. The rules govern the physical plant and operation of such facilities. Full text of the standards can be obtained by contacting:

New Jersey Department of Health
Division of Health Facilities Evaluation
John Fitch Way
CN 367
300 Whitehead Road
Trenton, New Jersey 08625-0367

A summary of the standards follows:

INSURANCE

(a)

NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD

Notice of Action on Petition for Rulemaking N.J.A.C. 11:21-1.1, Exhibit G Public Notice

Petitioner: New Jersey Optometric Association

Take notice that on March 2, 1994 the New Jersey Small Employer Health Benefits Program ("SEH") Board received a petition for rulemaking concerning N.J.A.C. 11:21-1.1, Exhibit G, the small employer health benefits HMO policy form, Section V(b), "Specialist Doctor Benefits."

The petitioner requested that the SEH Board amend the list of "Specialist Doctor Benefits" to specifically name optometry as a covered specialist benefit for reimbursement under the standard HMO Policy form.

On July 18, 1994, the SEH Board published a notice in the New Jersey Register to provide notice of the receipt of the petition for rulemaking and of the Board's decision to refer the matter to the Board's Policy Forms Committee for further deliberations in accordance with N.J.A.C. 11:21-18.3(c)3 with the intent to make a final determination on or before July 29, 1994 (see 26 N.J.R. 3089(a)).

The deliberations of the Policy Forms Committee have been completed and the SEH Board has fully considered the petition and the recommendation of the Policy Forms Committee. The SEH Board has determined that an amendment to the list of "Specialist Doctor Benefits" to specifically name optometry as a covered specialist benefit for reimbursement under the standard HMO policy form is not necessary at this time.

The SEH Board first considered the issue of expressly including optometry in the list of Specialist Doctor Benefits on the standard HMO policy form when it was raised in a comment to the proposed rule. Upon final adoption of the rule, the SEH Board did not believe it was necessary to list optometry because the list of Specialist Doctor Benefits is not exclusive; rather, section V(b) of the standard HMO policy form specifically states that "[s]ervices include but are not limited to the following" and proceeds to list 19 examples of the most common specialist services. Moreover, optometry is not listed in the exclusions in section VI of the standard HMO policy form. Furthermore, the form's definition of "covered services" lists the criteria used to determine whether a service will be covered by the carrier. It is clear from those criteria that medically necessary services performed by a licensed optometrist, upon referral by the primary care physician, would be covered. The SEH Board responded to this effect in its responses to the public comments in the SEH Board's final rule promulgating the standard HMO policy form (25 N.J.R. 5257).

Upon completion of the Policy Forms Committee's review, the SEH Board again considered the petition in light of all specialty services not expressly named in the standard HMO policy form, including optometry, and determined that a further clarification is not necessary at this time. The Policy Form Committee determined that the absence of a specific mention of optometry in the list of Specialist Doctor Benefits would have no effect on covered persons' access to optometry since all referrals to specialists are made by an HMO primary care physician rather than the covered person. Therefore, the SEH Board hereby denies the petition for the reasons set forth above.

A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 11:21-18.3(b).

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EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to Executive Order No. 66(1978), an administrative rule is assigned an expiration date not to exceed five years from the date of promulgation by a State agency, unless the rule is exempt from the provisions of the order. In the Administrative Code, a single expiration date is affixed at the chapter level and applies to the entire chapter. See N.J.A.C. 1:30-4.4 for an explanation of expiration date assignment.

The following table is a complete listing of established New Jersey Administrative Code expiration dates and exemptions, by Title and Chapter. Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code as a part of the Title Table of Contents for each executive department or agency, on the Subtitle Page for each group of chapters in a Title, and at the beginning of each Chapter.

This listing is published quarterly, in March, June, September and December, in the first issue of the month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	4/21/97
1:5	9/13/96
1:6	4/21/97
1:6A	3/19/95
1:7	4/21/97
1:10	4/21/97
1:10B	9/13/96
1:11	4/21/97
1:12	8/1/99
1:12A	8/1/99
1:13	4/21/97
1:13A	2/3/99
1:14	7/15/96
1:20	4/21/97
1:21	4/21/97
1:30	1/25/96
1:31	4/21/97

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	11/19/95
2:1-4	Exempt (28 C.F.R. Part 35)
2:2	3/7/99
2:3	7/7/99
2:5	8/21/94
2:6	EXPIRED RULES
2:9	8/19/96
2:16	1/22/96
2:17	5/31/96
2:18	8/5/96
2:19	10/1/95
2:20	10/1/95
2:21	8/5/96
2:22	6/26/97
2:23	5/28/98
2:24	4/2/95
2:32	5/13/97
2:33	3/6/94
2:34	1/2/95
2:48	10/25/95
2:50	5/1/97
2:52	5/1/95
2:53	1/10/96
2:54	Exempt (7 U.S.C. 601 et seq., 7 C.F.R. 1004)
2:68	10/29/98
2:69	12/20/98
2:70	8/20/95
2:71	7/2/98
2:72	7/2/98
2:74	7/2/98
2:76	6/28/99
2:90	6/22/95

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/4/96
3:2	4/12/95
3:3	1/11/95
3:4	8/17/97
3:6	3/1/96
3:7	9/12/95
3:11	7/18/99
3:12	6/15/97
3:13	1/21/97
3:14	3/7/99
3:16	6/18/95
3:17	6/13/96
3:18	12/24/97
3:19	3/15/96
3:21	1/24/97
3:22	5/12/94
3:23	7/6/97
3:24	8/18/94
3:25	7/23/97
3:26	12/31/95
3:27	9/12/95
3:28	12/12/94
3:29	8/5/96
3:32	11/1/98
3:33	9/18/94
3:38	9/11/97
3:41	10/11/95
3:42	3/10/98

PERSONNEL—TITLE 4A

N.J.A.C.	Expiration Date
4A:1	9/22/97
4A:1-5	Exempt (28 C.F.R. Part 35)
4A:2	9/22/97
4A:3	8/5/98
4A:4	5/12/98
4A:5	9/22/97
4A:6	12/22/97
4A:7	9/22/97
4A:8	1/16/95
4A:9	9/22/97
4A:10	9/22/97

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:1	2/5/95
5:2	4/10/94
5:3	7/30/98
5:4	9/1/97
5:5	Exempt (28 C.F.R. Part 35)
5:10	8/26/98
5:11	3/9/99
5:12	12/27/94
5:13	6/22/97
5:14	11/9/95
5:15	7/5/99
5:18	1/4/95
5:18A	1/4/95

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N.J.A.C.	Expiration Date
5:18B	1/4/95
5:18C	2/5/95
5:19	1/15/98
5:20	9/3/96
5:22	2/5/95
5:23	2/3/98
5:24	7/10/95
5:25	2/19/96
5:25A	4/20/97
5:26	2/7/96
5:27	5/2/95
5:28	12/13/95
5:29	2/19/96
5:30	5/27/98
5:31	12/1/94
5:33	8/6/95
5:34	12/3/95
5:37	1/7/96
5:50	9/17/98
5:51	8/11/98
5:52	1/2/95
5:60	6/20/99
5:70	4/22/97
5:71	6/4/95
5:80	4/20/95
5:91	12/7/97
5:92	2/7/96
5:93	6/6/99
5:100	6/18/95

DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A

N.J.A.C.	Expiration Date
5A:1	3/12/95
5A:2	5/17/95
5A:3	2/3/97
5A:4	2/3/97
5A:5	9/21/97
5A:6	6/20/99
5A:7	Exempt (28 C.F.R. Part 35)

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:1	1/11/96
6:2	12/8/98
6:3	6/7/98
6:5	10/22/95
6:7	1/2/95
6:8	12/11/96
6:9	5/3/98
6:11	9/21/95
6:12	3/8/96
6:20	7/16/95
6:21	7/11/99
6:22	7/16/95
6:22A	10/8/98
6:24	1/11/96
6:26	8/1/99
6:28	2/10/99
6:29	2/8/95
6:30	6/6/99
6:31	11/16/94
6:39	6/9/99
6:43	8/10/95
6:46	4/10/97
6:51	8/5/96
6:53	4/10/97
6:64	9/14/97
6:68	2/26/95
6:70	8/5/99
6:78	10/8/98

ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7

N.J.A.C.	Expiration Date
7:1	8/15/95
7:1A	5/22/97
7:1C	6/15/95
7:1D	9/13/98
7:1E	9/3/96
7:1F	4/16/97
7:1G	6/16/99
7:1H	7/13/95
7:1I	2/22/99
7:1J	1/4/98
7:1K	3/1/98
7:2	10/7/96
7:3	6/21/98
7:4	8/17/97
7:4A	9/18/94
7:4B	12/6/98
7:5	11/19/95
7:5A	6/17/98
7:5B	6/24/98
7:5C	1/16/95
7:7	6/24/99
7:7A	3/16/97
7:7E	7/24/95
7:7F	1/19/93
7:8	2/5/98
7:9	1/18/96
7:9A	8/21/94
7:9B	1/18/96
7:10	9/1/94
7:11	5/3/98
7:12	11/24/97
7:13	6/10/99
7:14	4/27/99
7:14A	6/2/95
7:14B	11/18/97
7:15	10/2/94
7:18	7/3/96
7:19	2/26/95
7:19A	3/19/95
7:19B	3/19/95
7:20	5/2/95
7:20A	12/8/98
7:22	12/27/96
7:22A	2/5/95
7:23	5/27/99
7:24	4/22/96
7:25	2/15/96
7:25A	4/23/95
7:26	10/25/95
7:26A	11/18/96
7:26B	11/18/97
7:26C	5/17/98
7:26E	6/7/98
7:27	Exempt
7:27A	12/4/94
7:27B	Exempt
7:28	7/30/95
7:29	5/21/95
7:29B	2/1/93
7:30	11/24/97
7:31	6/18/98
7:32	7/6/98
7:36	10/29/98
7:38	9/18/95
7:45	1/28/99
7:50	Exempt
7:60	3/2/97
7:61	5/17/98

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HEALTH—TITLE 8

N.J.A.C.	Expiration Date
8:2	8/16/98
8:2A	12/20/98
8:7	9/14/95
8:8	4/12/99
8:9	2/14/96
8:13	9/8/97
8:18	11/6/94
8:19	5/11/95
8:20	3/2/95
8:21	10/23/95
8:21A	8/3/97
8:22	7/11/96
8:23	12/13/94
8:24	4/14/98
8:25	5/11/98
8:26	4/12/96
8:31	1/16/95
8:31A	2/20/95
8:31B	8/17/95
8:31C	4/20/97
8:33	7/27/95
8:33A	11/25/97
8:33B	7/27/95
8:33C	9/8/97
8:33E	12/20/95
8:33F	11/16/94
8:33H	9/8/97
8:33I	2/16/95
8:33J	4/24/94
8:33K	3/27/94
8:33L	6/6/96
8:33M	7/17/94
8:33N	5/15/94
8:33P	3/19/95
8:33Q	11/19/95
8:33R	12/11/94
8:33S	10/4/98
8:34	11/1/98
8:35A	9/8/97
8:36	12/20/98
8:38	7/18/97
8:39	6/14/98
8:40	12/6/96
8:41	6/21/98
8:41A	2/18/97
8:42	8/17/97
8:42A	6/17/99
8:42B	6/14/98
8:43	10/4/98
8:43A	8/16/98
8:43F	2/20/95
8:43G	2/5/95
8:43H	6/17/99
8:44	4/20/95
8:45	2/7/95
8:51	9/17/95
8:52	12/11/96
8:57	4/20/95
8:57A	4/20/95
8:59	9/29/94
8:60	5/3/95
8:61	10/4/96
8:65	6/17/96
8:66	3/5/95
8:66A	3/5/95
8:70	6/14/98
8:71	5/16/99
8:80	4/6/97
8:100	7/20/97

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	9/30/98
9:2	5/4/95
9:3	9/27/93
9:4	9/26/96
9:5	4/1/96
9:6	4/30/95
9:6A	3/15/98
9:7	11/6/97
9:8	10/15/95
9:9	8/16/98
9:11	4/11/99
9:12	4/11/99
9:14	4/11/95
9:15	8/21/94
9:16	1/19/98
9:17	2/22/99
9:18	6/20/99

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1A	5/12/98
10:2	12/11/96
10:3	10/22/98
10:4	Exempt (28 C.F.R. Part 35)
10:6	1/7/96
10:7	1/21/97
10:8	1/3/99
10:11	1/16/95
10:12	12/23/96
10:13	7/18/93
10:14	5/7/98
10:15	1/1/95
10:15A	1/1/95
10:15B	1/1/95
10:15C	1/1/95
10:16	12/21/97
10:18	7/18/99
10:31	5/13/99
10:35	9/21/97
10:36	12/29/97
10:37	11/2/95
10:37A	6/6/99
10:37B	5/2/99
10:37C	7/18/99
10:37D	9/6/99
10:38	4/29/96
10:38A	7/19/98
10:40	4/25/99
10:41	4/18/99
10:42	8/19/96
10:43	8/21/94
10:44A	11/8/98
10:44B	7/16/95
10:45	2/20/95
10:46	9/17/95
10:47	11/2/95
10:48	12/19/95
10:49	8/17/97
10:50	2/27/96
10:51	9/7/98
10:52	2/8/95
10:53	4/27/95
10:53A	11/2/97
10:54	2/15/96
10:55	3/8/95
10:56	8/21/96
10:57	2/13/96
10:58	2/22/96
10:59	2/15/96
10:60	2/19/96
10:61	2/15/96
10:62	1/3/99
10:63	11/28/94

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N.J.A.C.	Expiration Date
10:64	2/22/96
10:65	2/19/96
10:66	12/6/98
10:67	2/19/96
10:68	6/28/96
10:69	5/14/98
10:69A	3/26/98
10:69B	10/21/98
10:70	6/7/96
10:71	12/24/95
10:72	8/24/97
10:73	7/15/96
10:80	9/27/98
10:81	7/25/99
10:82	7/25/99
10:83	11/2/97
10:84	1/18/99
10:85	12/20/94
10:86	9/21/97
10:87	12/21/98
10:89	5/24/95
10:90	10/14/92
10:91	9/4/95
10:95	Exempt
10:97	4/15/99
10:99	6/4/95
10:109	2/4/96
10:120	7/9/96
10:121	7/16/95
10:121A	11/25/97
10:122	5/16/99
10:122A	Exempt
10:122B	1/4/98
10:122C	1/4/98
10:122D	1/4/98
10:122E	1/4/98
10:123	7/13/95
10:123A	8/17/97
10:124	11/4/97
10:125	6/4/95
10:126	10/6/98
10:126A	5/7/95
10:127	8/16/98
10:128	2/19/96
10:129	7/13/95
10:130	7/2/95
10:131	10/7/97
10:132	10/25/96
10:133	1/4/98
10:133A	1/4/98
10:133B	1/4/98
10:133C	1/4/98
10:133D	11/1/98
10:141	2/7/94
10:150	10/22/97

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	6/1/97
10A:1-3	Exempt (28 C.F.R. Part 35)
10A:2	2/5/95
10A:3	9/16/96
10A:4	5/7/96
10A:5	6/17/96
10A:6	10/27/97
10A:8	8/19/97
10A:9	2/18/97
10A:10	7/9/97
10A:16	7/6/97
10A:17	2/3/97
10A:18	5/27/97
10A:19	4/25/99
10A:20	2/18/97
10A:21	2/4/96
10A:22	3/7/99
10A:23	7/6/97
10A:31	3/5/95
10A:32	4/16/95
10A:33	5/2/94
10A:34	4/6/97
10A:35	4/15/96
10A:70	Exempt
10A:71	2/5/95

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	1/31/96
11:1-3	Exempt (28 C.F.R. Part 35)
11:2	11/30/95
11:3	1/4/96
11:4	11/30/95
11:5	10/15/98
11:6	7/6/98
11:7	9/25/97
11:10	7/12/95
11:12	9/27/96
11:13	11/10/97
11:15	10/26/94
11:16	1/31/96
11:17	4/15/98
11:17A	1/2/95
11:17B	1/2/95
11:17C	1/2/95
11:17D	1/2/95
11:18	12/18/94
11:19	2/1/98
11:20	8/13/98
11:21	10/15/98

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:3	11/24/98
12:5	10/18/98
12:6	9/24/98
12:7	Exempt (28 C.F.R. Part 35)
12:15	7/30/95
12:16	3/23/95
12:17	1/4/96
12:18	3/5/98
12:19	7/2/95
12:20	7/18/99
12:23	4/4/99
12:35	7/16/95
12:40	2/5/95
12:41	1/14/99
12:45	12/29/98
12:51	11/22/96
12:55	12/16/96
12:56	9/26/95
12:57	9/26/95
12:58	9/26/95
12:60	3/19/98
12:61	12/16/96
12:90	12/15/94
12:100	9/22/94
12:102	5/21/95
12:105	1/11/96
12:110	1/8/98
12:112	8/27/98
12:120	5/3/95
12:175	11/10/98
12:190	2/1/98
12:195	6/14/98
12:196	8/6/95
12:200	8/3/95
12:210	12/16/96
12:235	5/3/96

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COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12A:1	Exempt (28 C.F.R. Part 35)
12A:9	5/28/98
12A:10-1	10/13/94
12A:11	4/30/98
12A:12	9/21/92
12A:31	7/16/95
12A:50	8/15/93
12A:54	8/15/93
12A:60	11/21/93
12A:80	7/2/95
12A:100	7/17/96
12A:120	7/27/98
12A:121	11/15/98

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	6/9/98
13:1C	Exempt (28 C.F.R. Part 35)
13:1D	4/18/99
13:2	7/24/95
13:3	5/17/98
13:4	1/17/96
13:10	3/25/99
13:13	7/16/95
13:14	9/16/96
13:18	3/30/95
13:19	8/18/94
13:20	12/13/95
13:21	12/13/95
13:23	5/19/99
13:24	9/27/94
13:25	3/16/95
13:26	7/29/98
13:27	2/20/95
13:28	5/14/98
13:29	5/23/95
13:30	3/12/95
13:31	11/20/96
13:32	10/21/97
13:33	3/12/95
13:34	10/22/98
13:35	9/21/94
13:36	9/27/94
13:37	1/23/95
13:38	8/27/95
13:39	7/18/99
13:39A	6/21/96
13:40	8/3/95
13:40A	12/16/96
13:41	7/17/95
13:42	11/1/98
13:43	8/26/98
13:44	8/4/99
13:44B	11/2/97
13:44C	7/8/98
13:44D	6/30/99
13:44E	7/1/96
13:44F	6/15/97
13:44G	1/4/98
13:45A	11/9/95
13:45B	9/21/97
13:46	9/4/95
13:47	1/27/97
13:47A	10/2/97
13:47B	2/10/99
13:47C	6/6/99
13:47K	9/17/95
13:48	1/17/96
13:49	12/16/98
13:51	9/16/96
13:54	11/18/96
13:57	5/16/99
13:59	7/30/95
13:60	1/16/97
13:61	3/5/95
13:62	3/19/95
13:63	8/19/96
13:70	1/25/95
13:71	1/25/95
13:72	1/19/98
13:75	7/5/99
13:76	4/16/98
13:77	1/22/98
13:78	11/24/98
13:79	10/22/98
13:80	9/17/95
13:81	8/6/95
13:82	4/18/99

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	6/1/97
14:3	5/6/96
14:5	12/2/96
14:5A	1/4/98
14:6	9/3/96
14:9	4/1/96
14:10	9/6/96
14:11	3/1/98
14:12	11/4/96
14:17	3/21/99
14:18	7/26/95
14:25	3/5/95
14:29	3/4/96
14:30	2/19/96
14:32	1/22/96
14:38	4/1/96

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:6	1/16/95
14A:8	1/16/95
14A:11	1/16/95
14A:13	EXPIRED RULES
14A:14	1/28/99

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:1	Exempt (28 C.F.R. Part 35)
15:2	4/12/98
15:3	8/19/96
15:5	7/6/97
15:10	4/15/96

PUBLIC ADVOCATE—TITLE 15A

N.J.A.C.	Expiration Date
15A:2	12/27/94

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	10/1/95
16:1A	6/13/99
16:1B	Exempt (28 C.F.R. Part 35)
16:4	9/16/96
16:5	11/20/94
16:6	7/8/99
16:7	3/6/94
16:20A	2/20/95
16:20B	2/20/95
16:21	8/6/95

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N.J.A.C.	Expiration Date
16:21A	11/20/94
16:21B	12/3/95
16:22	12/18/95
16:24	2/5/95
16:25	8/9/98
16:25A	5/13/98
16:26	7/8/99
16:27	4/8/96
16:28	5/7/98
16:28A	5/7/98
16:29	5/7/98
16:30	5/7/98
16:31	5/7/98
16:31A	5/7/98
16:32	2/8/95
16:38	10/15/95
16:41	9/8/97
16:41B	7/2/95
16:41C	5/4/97
16:41D	3/21/99
16:43	5/10/95
16:44	3/24/99
16:45	8/12/99
16:46	3/24/99
16:47	4/20/97
16:49	2/8/95
16:50	12/6/98
16:51	2/14/97
16:53	2/14/97
16:53B	4/15/99
16:53C	5/13/98
16:53D	4/8/99
16:54	7/6/98
16:55	5/13/98
16:56	6/22/99
16:60	5/13/98
16:61	5/13/98
16:62	2/26/95
16:72	3/20/96
16:73	5/18/97
16:74	12/16/96
16:75	5/13/93
16:76	2/6/94
16:77	3/5/95
16:78	12/17/95
16:79	9/12/96
16:80	10/5/98
16:81	10/5/98
16:82	9/5/94
16:83	1/19/98
16:84	11/1/98
16:85	11/1/98

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	5/1/98
17:2	11/8/94
17:3	12/20/98
17:4	6/8/95
17:5	11/30/95
17:6	12/20/98
17:7	12/19/93
17:8	10/15/95
17:9	8/23/98
17:10	5/1/98
17:12	10/13/94
17:13	10/13/94
17:14	10/13/94
17:16	5/2/96
17:19	3/8/95
17:20	6/1/98
17:25	5/26/94
17:27	10/6/98
17:28	8/17/95
17:29	9/26/95
17:30	3/11/97
17:32	3/19/98
17:33	4/17/94
17:40	11/19/95
17:41	4/1/96
17:42	9/8/97

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:1	7/21/94
18:2	11/1/98
18:3	3/14/99
18:5	3/14/99
18:6	3/14/99
18:7	3/14/99
18:8	2/24/99
18:9	6/4/98
18:12	10/4/98
18:12A	10/4/98
18:14	10/4/98
18:15	10/4/98
18:16	10/4/98
18:17	10/4/98
18:18	3/14/99
18:18A	2/3/97
18:19	3/14/99
18:21	2/19/96
18:22	2/24/99
18:23	2/24/99
18:23A	9/4/95
18:24	6/4/98
18:25	2/19/96
18:26	6/4/98
18:35	6/4/98
18:36	3/19/95
18:37	7/23/95
18:38	2/1/98
18:39	9/8/92

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:2	8/15/99
19:3	3/29/98
19:3A	11/4/96
19:3A-3	Exempt (28 C.F.R. Part 35)
19:3B	3/29/98
19:4	3/29/98
19:4A	3/29/98
19:6	5/6/96
19:8	5/17/98
19:9	9/13/98
19:10	7/28/99
19:11	8/20/95
19:12	7/17/96
19:14	8/20/95
19:16	7/17/96
19:17	6/7/98
19:18	5/21/95
19:20	2/5/95
19:25	10/1/95
19:30	7/23/95
19:30-7	Exempt (28 C.F.R. Part 35)
19:31	8/20/95
19:40	8/15/99
19:40-6	Exempt (28 C.F.R. Part 35)
19:41	4/15/95
19:42	8/15/95
19:43	12/21/97
19:44	12/15/96
19:45	8/15/97
19:46	4/15/98
19:47	4/15/96

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N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
19:48	8/15/98	19:54	12/15/94
19:49	9/18/97	19:55	1/19/98
19:50	12/15/98	19:61	3/2/97
19:51	8/15/96	19:65	10/5/97
19:53	12/15/95	19:75	1/11/99

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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 July 5, 1994 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 promulgation of the rule and its chronological ranking in the Registry. As an example, R.1994 d.1 means the first rule filed for 1994.

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.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT JUNE 20, 1994

NEXT UPDATE: SUPPLEMENT JULY 18, 1994

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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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
25 N.J.R. 3885 and 4360	September 7, 1993	26 N.J.R. 1273 and 1416	March 21, 1994
25 N.J.R. 4361 and 4540	September 20, 1993	26 N.J.R. 1417 and 1554	April 4, 1994
25 N.J.R. 4541 and 4694	October 4, 1993	26 N.J.R. 1555 and 1738	April 18, 1994
25 N.J.R. 4695 and 4812	October 18, 1993	26 N.J.R. 1739 and 1904	May 2, 1994
25 N.J.R. 4813 and 4980	November 1, 1993	26 N.J.R. 1905 and 2166	May 16, 1994
25 N.J.R. 4981 and 5382	November 15, 1993	26 N.J.R. 2167 and 2510	June 6, 1994
25 N.J.R. 5383 and 5728	December 6, 1993	26 N.J.R. 2511 and 2692	June 20, 1994
25 N.J.R. 5729 and 6084	December 20, 1993	26 N.J.R. 2693 and 2828	July 5, 1994
26 N.J.R. 1 and 280	January 3, 1994	26 N.J.R. 2829 and 3102	July 18, 1994
26 N.J.R. 281 and 520	January 18, 1994	26 N.J.R. 3103 and 3230	August 1, 1994
26 N.J.R. 521 and 878	February 7, 1994	26 N.J.R. 3231 and 3504	August 15, 1994
26 N.J.R. 879 and 1178	February 22, 1994	26 N.J.R. 3505 and 3780	September 6, 1994
26 N.J.R. 1179 and 1272	March 7, 1994		

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ADMINISTRATIVE LAW—TITLE 1				
1:10-1.1, 14.2, 14.3	Family Development hearings: reproposal	26 N.J.R. 1744(b)	R.1994 d.417	26 N.J.R. 3441(a)
1:12	Department of Labor hearings	26 N.J.R. 2174(a)	R.1994 d.406	26 N.J.R. 3154(a)
1:12A	Department of Labor hearings	26 N.J.R. 2174(a)	R.1994 d.406	26 N.J.R. 3154(a)
1:14-10	BRC ratemaking hearings: discovery	26 N.J.R. 3(a)		
1:14-10	BRC ratemaking hearings: extension of comment period regarding discovery process	26 N.J.R. 883(a)		
1:14-10	Board of Regulatory Commissioners ratemaking hearings: discovery	26 N.J.R. 2513(a)	R.1994 d.451	26 N.J.R. 3705(a)
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AGRICULTURE—TITLE 2				
2:3	Livestock and poultry importation	26 N.J.R. 1908(a)	R.1994 d.399	26 N.J.R. 3159(a)
2:5	Quarantines and embargoes on animals	26 N.J.R. 1908(b)		
2:6	Animal health: biologics for diagnostic or therapeutic purposes	25 N.J.R. 4985(a)		
2:33	Agricultural fairs	26 N.J.R. 285(a)		
2:71-2.2, 2.4, 2.5, 2.6	Jersey Fresh Quality Grading Program: cut flowers, fresh market tomatoes	26 N.J.R. 2831(a)		
2:76	Agriculture Development Committee	26 N.J.R. 1419(a)	R.1994 d.393	26 N.J.R. 3159(b)
2:76-6.11	Farmland Preservation Program: correction to proposal and extension of comment period regarding acquisition of development easements	25 N.J.R. 4697(a)		
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BANKING—TITLE 3				
3:1-2.17, 2.25, 2.26	Closing of branch offices	26 N.J.R. 883(b)	R.1994 d.318	26 N.J.R. 2779(a)
3:1-4.5	Governmental unit deposit protection: public funds exceeding 75 percent of capital funds	26 N.J.R. 2832(a)		
3:1-6.6	Department examination charges	26 N.J.R. 1560(b)		
3:1-16.2, 16.5	Mortgage commitments, lender advertising and licensure, surety bond amounts	26 N.J.R. 3234(a)		
3:2-1.4	Mortgage commitments, lender advertising and licensure, surety bond amounts	26 N.J.R. 3234(a)		
3:4-3	Banking institutions: sale of alternative investments	25 N.J.R. 5733(a)		
3:6-15.2	Disqualification of savings bank directors	25 N.J.R. 3586(b)	R.1994 d.397	26 N.J.R. 3163(a)
3:11	Investments	26 N.J.R. 1909(a)	R.1994 d.377	26 N.J.R. 2892(a)
3:11-7.11	Disqualification of bank directors	25 N.J.R. 3586(b)	R.1994 d.397	26 N.J.R. 3163(a)
3:13-5	Mutual holding companies	26 N.J.R. 1213(a)	R.1994 d.373	26 N.J.R. 2892(b)
3:22	Insurance premium finance companies	26 N.J.R. 2697(a)		
3:32-3	Mutual holding companies	26 N.J.R. 1213(a)	R.1994 d.373	26 N.J.R. 2892(b)
3:33	Acquisitions by out-of-State entities: application requirements	26 N.J.R. 3235(a)		
3:38-5.3	Mortgage referrals by real estate agents	26 N.J.R. 6(a)		
3:38-5.3	Mortgage referrals by real estate agents: extension of comment period	26 N.J.R. 884(a)		
3:41-12	Cemetery Board: service contractors and service contracts	26 N.J.R. 6(b)		
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4A:1-2.3	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:2-2.3	Sexual harassment; discrimination complaints	26 N.J.R. 1182(a)		
4A:2-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:3-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:3-4.6	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
4A:4-2.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:4-2.15, 5.2	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
4A:4-4.8	Non-selection of eligible in same rank	26 N.J.R. 2697(b)		
4A:6-1.1, 1.8, 1.10, 1.21A	Family and medical leave	26 N.J.R. 1183(b)		
4A:6-1.2, 1.3, 1.5, 1.23, 2.4	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
4A:6-4.2	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:7-1.3, 3.3	Sexual harassment; discrimination complaints	26 N.J.R. 1182(a)		
4A:8-2.1	Layoff rights	26 N.J.R. 2182(a)	R.1994 d.441	26 N.J.R. 3705(b)
4A:8-2.4	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
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5:15	Emergency shelters for the homeless	26 N.J.R. 1421(a)	R.1994 d.324	26 N.J.R. 2779(b)
5:18-2.12, 2.21, App. 3-A	Uniform Fire Code: cigarette lighters	26 N.J.R. 2182(b)		
5:23-1.4	Uniform Construction Code: administrative change	_____	_____	26 N.J.R. 2779(c)
5:23-2.5	Uniform Construction Code: increase in dwelling size	26 N.J.R. 1910(a)	R.1994 d.433	26 N.J.R. 3706(a)
5:23-2.23, 4.20	UCC: testing of backflow preventers	26 N.J.R. 1911(a)	R.1994 d.434	26 N.J.R. 3706(b)
5:23-3.4, 3.20A	Indoor air quality subcode	25 N.J.R. 5918(a)		
5:23-3.14, 7	Uniform Construction Code: Barrier Free Subcode	26 N.J.R. 2698(a)		
5:23-4.4, 4.5, 4.5A, 4.12, 4.14, 4.18, 4.20	Uniform Construction Code: private on-site inspection agencies	25 N.J.R. 2162(a)	R.1994 d.323	26 N.J.R. 2780(a)
5:23-5.19	UCC: elevator inspector HHS requirements	26 N.J.R. 1912(a)	R.1994 d.435	26 N.J.R. 3706(c)
5:23-8.10	Asbestos Hazard Abatement Subcode: asbestos safety technician	26 N.J.R. 2183(a)	R.1994 d.436	26 N.J.R. 3707(a)
5:23-10	Radon Hazard Subcode: administrative change	_____	_____	26 N.J.R. 3707(b)
5:23-10.1, 10.3, 10.4	Radon Hazard Subcode: schools and residential buildings in tier one areas	26 N.J.R. 2704(a)		
5:25-2.5	New home warranties and builder registration: denial of registration	26 N.J.R. 1913(a)		
5:25A-1.3, 2.1, 2.5, 2.6	FRT plywood roof sheathing failures: alternative claim procedures	26 N.J.R. 2706(a)		
5:34-7.2, 7.5, 7.6, 7.8, 7.9	Local government finance: renewal of registration of Cooperative Purchasing System	26 N.J.R. 2707(a)		
5:37	Municipal, county and authority employees deferred compensation plans	26 N.J.R. 2708(a)		
5:80-3.2	Housing and Mortgage Finance Agency: return on equity for housing project sponsors	26 N.J.R. 1186(a)	R.1994 d.398	26 N.J.R. 3163(b)
5:80-5.10	Housing and Mortgage Finance Agency: prepayment of project mortgage	26 N.J.R. 1187(a)		
5:93-3.6, 5.6	New Jersey Council on Affordable Housing: reductions for substantial compliance; zoning for inclusionary development	26 N.J.R. 2514(a)		
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6:5-2, App.	Department of Education: organizational rule	Exempt	R.1994 d.333	26 N.J.R. 2784(a)
6:21	Pupil transportation	26 N.J.R. 1997(a)	R.1994 d.404	26 N.J.R. 3164(a)
6:26	Intervention and referral services for general education pupils	26 N.J.R. 2004(a)	R.1994 d.403	26 N.J.R. 3170(a)
6:28-2.10, 3.6, 4.3	Special education	26 N.J.R. 1422(a)	R.1994 d.334	26 N.J.R. 2787(a)
6:30-2.1	Adult basic skills programs: professional staff certification	26 N.J.R. 2184(a)	R.1994 d.443	26 N.J.R. 3707(c)
6:39	District evaluation	26 N.J.R. 1423(a)	R.1994 d.335	26 N.J.R. 2788(a)
6:70	Library network services	26 N.J.R. 2184(b)	R.1994 d.444	26 N.J.R. 3708(a)
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7:0	Management of waste oil: request for public comment	26 N.J.R. 1466(a)		
7:1C-1.1, 1.2, 1.5	Ninety-day construction permits: fees	26 N.J.R. 787(a)	R.1994 d.337	26 N.J.R. 2789(a)
7:1C-1.1, 1.3, 1.5	Ninety-day construction permits: fees	26 N.J.R. 913(a)	R.1994 d.379	26 N.J.R. 2920(a)
7:1G	Worker and Community Right to Know	26 N.J.R. 123(a)	R.1994 d.349	26 N.J.R. 2930(a)
7:1G-2.1, 3.1	Community Right to Know: EPA list of regulated substances for accidental release prevention; hazardous substance reporting threshold	26 N.J.R. 2833(a)		
7:4A	Historic Preservation Grant Program	26 N.J.R. 3105(a)		
7:4A-2.3	Historic Preservation Bond Program	26 N.J.R. 3253(b)		
7:4B-3.1	Historic Preservation Bond Program	26 N.J.R. 3253(b)		
7:4C	Historic Preservation Bond Program	26 N.J.R. 3253(b)		
7:5D	State Trails System	26 N.J.R. 1459(a)		
7:7	Coastal Permit Program	26 N.J.R. 918(a)	R.1994 d.378	26 N.J.R. 2934(a)
7:7	Coastal Permit Program: extension of comment period	26 N.J.R. 1561(a)		
7:7-8	Coastal Permit Program: enforcement	26 N.J.R. 1745(a)	R.1994 d.413	26 N.J.R. 3188(a)
7:7E	Coastal zone management	26 N.J.R. 943(a)	R.1994 d.380	26 N.J.R. 2990(a)
7:7E	Coastal zone management: public meetings and opportunity for comment on proposed revisions to planning and growth region policies	26 N.J.R. 1003(a)		
7:7E-3.43	Coastal zone management: administrative correction regarding special urban areas	26 N.J.R. 1561(b)		
7:7E-8.12	Coastal zone management: notice of clarification	26 N.J.R. 1561(c)		
7:9A	Individual subsurface sewage disposal systems	26 N.J.R. 2715(a)		
7:10	Safe Drinking Water Act rules	26 N.J.R. 2720(a)		
7:13	Flood hazard area control	26 N.J.R. 1009(a)		
7:13	Flood hazard area control	26 N.J.R. 1036(a)	R.1994 d.338	26 N.J.R. 2791(a)
7:13-7.1	Flood plain redelineation of Pascack and Fieldstone brooks in Montvale	26 N.J.R. 2834(a)		
7:14A	New Jersey Pollutant Discharge Elimination System	26 N.J.R. 1332(a)		
7:14A-2.15, 6.14, 6.17, 12.4	Contaminated site remediation: NJPDES permit program	26 N.J.R. 158(a)	R.1994 d.448	26 N.J.R. 3709(a)
7:15	Statewide Water Quality Management Planning Rules: public meetings and opportunity for comment on draft amendments	26 N.J.R. 792(a)		
7:15	Statewide water quality management planning	26 N.J.R. 3106(a)		
7:24A	Dam Restoration and Inland Waters Projects Loan Program	26 N.J.R. 2228(a)		
7:25-4	Implementation of Wild Bird Act of 1991	26 N.J.R. 1040(a)		
7:25-5	1994-95 Game Code	26 N.J.R. 1913(b)	R.1994 d.412	26 N.J.R. 3193(a)
7:25-6	1995-96 Fish Code	26 N.J.R. 2835(a)		
7:25-6.5	Fish Code: administrative correction regarding trout fishing areas	———	———	26 N.J.R. 3082(a)
7:25-6.9	1995-96 Fish Code: administrative correction	26 N.J.R. 3258(a)		
7:25-18.1	Flounder management	26 N.J.R. 1885(a)	R.1994 d.339	26 N.J.R. 2792(a)
7:25-18.1, 18.5	Directed conch fishery	26 N.J.R. 1931(a)		
7:25-24.7, 24.9	Leasing of Atlantic coast bottom for aquaculture	26 N.J.R. 3109(a)		
7:25A-1.2, 1.4, 1.9, 4.3	Oyster management	26 N.J.R. 1562(a)	R.1994 d.450	26 N.J.R. 3714(a)
7:26-1.4	Hazardous waste transportation: informal meeting on draft "10-day in-transit holding rule"	26 N.J.R. 294(a)		
7:26-8.2, 8.14	Hazardous waste from specific sources: removal of K053 through K059 and K074 from list	26 N.J.R. 1464(a)	R.1994 d.411	26 N.J.R. 3211(a)
7:26C	Site Remediation Program: opportunity for comment on draft remedial priority system	25 N.J.R. 4551(c)		
7:27-1, 8, 18, 22	Air pollution control: facility operating permits	25 N.J.R. 3963(a)		
7:27-1, 8, 18, 21, 22	Air pollution control: extension of comment period regarding facility operating permits, emission statements, and penalties	25 N.J.R. 4836(a)		
7:27-1, 8, 18, 22	Air Operating Permits and Reconstruction Permits: public roundtable on proposed new rules and amendments	26 N.J.R. 793(a)		
7:27-15	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27-15.4	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27-16.1	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27-19	Control and prohibition of air pollution from oxides of nitrogen	26 N.J.R. 3298(a)		
7:27-21.1–21.5, 21.8, 21.9, 21.10	Air pollution control: facility emission statements	25 N.J.R. 4033(a)		
7:27-25.1, 25.3	Oxygenated fuels program	26 N.J.R. 1148(a)		
7:27-25.1, 25.3, 25.8	Control and prohibition of air pollution by vehicular fuels	26 N.J.R. 1048(a)		

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7:27-25.1, 25.3, 25.8	Redesignation of carbon monoxide nonattainment areas and amendments regarding oxygenated fuels: public hearing time change	26 N.J.R. 1336(a)		
7:27-26	Low Emission Vehicles Program	26 N.J.R. 1467(a)		
7:27-27	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27A-3.2, 3.5, 3.10	Air pollution control: administrative penalties and requests for adjudicatory hearings	25 N.J.R. 4045(a)		
7:27A-3.10	Air pollution control: facility emission statement penalties	25 N.J.R. 4033(a)		
7:27A-3.10	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27A-3.10	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27A-3.10	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27A-3.10	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27A-3.10	Control and prohibition of air pollution from oxides of nitrogen	26 N.J.R. 3298(a)		
7:27B-4	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27B-4.5, 4.6, 4.9	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:28-48	Non-ionizing radiation producing sources: registration fees	25 N.J.R. 5422(a)		
7:28-48	Non-ionizing radiation producing sources: extension of comment period regarding registration fees	26 N.J.R. 793(b)		
7:50-2, 3, 4, 5, 6, 7	Pinelands Comprehensive Management Plan	26 N.J.R. 165(a)		
7:61-3.15, 3.16	Board of Commissioners of Pilotage: Drug Free Workplace Program	26 N.J.R. 2238(a)	R.1994 d.449	26 N.J.R. 3715(a)

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8:1-1	Disability discrimination grievance procedure	26 N.J.R. 2005(a)		
8:8	Collection, processing, storage and distribution of blood	26 N.J.R. 2025(a)	R.1994 d.350	26 N.J.R. 3171(a)
8:8-8.3, 8.5, 8.8	Collection of human blood	26 N.J.R. 3141(a)		
8:31B-2.1, 2.3, 2.4, 2.5	Hospital reporting of uniform bill-patient summaries (inpatient)	26 N.J.R. 10(a)		
8:31B-3.3, 3.70	Health care financing: monitoring and reporting	26 N.J.R. 12(a)		
8:31B-4.37	Charity care audit functions	26 N.J.R. 13(a)		
8:36-1.8, 9.3	Assisted living residences and comprehensive personal care homes: personal care assistants; administration of medications	26 N.J.R. 2187(a)		
8:38-1–3	Health Maintenance Organizations	26 N.J.R. 1624(a)	R.1994 d.365	26 N.J.R. 2896(a)
8:39	Long-term care facilities: standards for licensure	26 N.J.R. 1772(c)		
8:42A	Licensure of alcoholism treatment facilities	26 N.J.R. 1625(a)	R.1944 d.366	26 N.J.R. 2896(b)
8:43D	Health Care Administration Board bylaws	26 N.J.R. 1627(a)		
8:43H	Licensure of rehabilitation hospitals	26 N.J.R. 1628(a)	R.1994 d.367	26 N.J.R. 2896(c)
8:44-2.5	Clinical laboratory Proficiency Testing Program	26 N.J.R. 1070(a)		
8:44-2.11	Clinical laboratories: reopening of comment period on reporting of blood lead levels	26 N.J.R. 1190(a)		
8:57-5	Confinement of persons with tuberculosis	26 N.J.R. 3236(a)		
8:59	Worker and Community Right to Know Act rules	26 N.J.R. 2888(a)		
8:59-App. A, B	Worker and Community Right to Know Hazardous Substance List	26 N.J.R. 540(a)		
8:65-10.1, 10.2	Controlled dangerous substances	26 N.J.R. 1630(a)	R.1993 d.325	26 N.J.R. 2792(b)
8:71	Interchangeable drug products (see 25 N.J.R. 4495(b), 6062(a), 364(b))	25 N.J.R. 2802(b)	R.1994 d.245	26 N.J.R. 2094(c)
8:71	Interchangeable drug products (see 25 N.J.R. 6060(c))	25 N.J.R. 3906(a)	R.1994 d.39	26 N.J.R. 364(a)
8:71	Interchangeable drug products (see 26 N.J.R. 362(b), 1347(b), 2095(a))	25 N.J.R. 4844(a)	R.1994 d.457	26 N.J.R. 3717(a)
8:71	List of Interchangeable Drug Products (see 26 N.J.R. 1348(a), 2096(a))	26 N.J.R. 13(b)	R.1994 d.456	26 N.J.R. 3716(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 14(a)	R.1994 d.244	26 N.J.R. 2039(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 69(a)	R.1994 d.243	26 N.J.R. 2028(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2025(b), 2901(a))	26 N.J.R. 1190(b)	R.1994 d.455	26 N.J.R. 3715(b)
8:71	Interchangeable drug products (see 26 N.J.R. 2897(a))	26 N.J.R. 1821(a)	R.1994 d.459	26 N.J.R. 3719(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2898(a))	26 N.J.R. 1822(a)	R.1994 d.458	26 N.J.R. 3717(b)
8:71	Interchangeable drug products	26 N.J.R. 2723(a)	R.1994 d.460	26 N.J.R. 3720(a)
8:91	Health Access New Jersey	26 N.J.R. 2007(a)		

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9:4-1.7	Curriculum coordinating committee	26 N.J.R. 1751(a)
9:9-7.1, 7.2, 7.3	Eligibility criteria for NJCLASS loans	26 N.J.R. 3242(a)

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9:11-2, 3, 4	Graduate EOF financial eligibility; Martin Luther King Physician-Dentist Scholarship; C. Clyde Ferguson Law Scholarship	26 N.J.R. 1932(a)	R.1994 d.452	26 N.J.R. 3722(a)

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10:15	Child Care Services Manual	26 N.J.R. 3327(a)		
10:15A	Child Care Services Manual	26 N.J.R. 3327(a)		
10:15B	Child Care Services Manual	26 N.J.R. 3327(a)		
10:15C	Child Care Services Manual	26 N.J.R. 3327(a)		
10:17	Child placement rights	26 N.J.R. 1563(a)		
10:18	Manual of Standards for Juvenile Detention Commitment Programs	25 N.J.R. 5749(a)	R.1994 d.392	26 N.J.R. 2902(a)
10:37-6.1–6.4, 6.8, 6.9, 6.25, 6.26, 6.30–6.33, 6.37, 6.38, 6.58, 7.1–7.9	Repeal (see 10:37D)	26 N.J.R. 1277(a)	R.1994 d.464	26 N.J.R. 3726(a)
10:37C	Community mental health clinical case management	25 N.J.R. 4845(a)	R.1994 d.336	26 N.J.R. 3082(b)
10:37D	Division of Mental Health and Hospitals: management and governing body standards for provider agencies	26 N.J.R. 1277(a)	R.1994 d.464	26 N.J.R. 3726(a)
10:43	Division of Developmental Disabilities: determination of need for guardian	26 N.J.R. 2838(a)		
10:43	Division of Developmental Disabilities: extension of comment period concerning determination of need for guardian	26 N.J.R. 3341(a)		
10:46A	Family Support Service System	26 N.J.R. 3341(b)		
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10:53-1.6, 1.7	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
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10:81-11.9	Public Assistance Manual: $50 disregarded child support payment	26 N.J.R. 1937(a)		
10:82	Aid to Families with Dependent Children (AFDC)	26 N.J.R. 1584(a)	R.1994 d.430	26 N.J.R. 3483(a)
10:85	General Assistance Manual	26 N.J.R. 2757(b)		
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10:133C-2	Eligibility for DYFS services	26 N.J.R. 897(a)		
10:133H-3	Review of children in out-of-home placement	25 N.J.R. 5752(a)		
10A:33	Manual of Standards for Juvenile Detention Commitment Programs (recodified to 10:18	25 N.J.R. 5749(a)	R.1994 d.392	26 N.J.R. 2902(a)

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10A:6-2.2, 2.7	Inmate legal services: use of typewriters	26 N.J.R. 2188(a)	R.1994 d.410	26 N.J.R. 3178(a)
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10A:33	Manual of Standards for Juvenile Detention Commitment Programs	25 N.J.R. 5749(a)	R.1994 d.392	26 N.J.R. 2902(a)
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11:21-7.4	Small Employer Health Benefits Program: carriers acting as administrators for small employers	26 N.J.R. 3117(a)		
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12:23-7	Workforce Development Partnership Program: occupational safety and health training services	26 N.J.R. 2774(a)		
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13:27-6.2	Board of Architects: administrative correction regarding depiction of existing conditions on a site plan	_____	_____	26 N.J.R. 3180(b)
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13:44E-2.13	Board of Chiropractic Examiners: overutilization; excessive fees	26 N.J.R. 1231(b)		
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13:70-14A.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1955(a)		
13:70-14A.8	Thoroughbred racing: possession of drugs or drug instruments	26 N.J.R. 1315(a)		
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13:71-23.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(b)		
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16:28-1.6	School zone along U.S. 40 in Woodstown Borough, Salem County	26 N.J.R. 3131(a)		
16:28-1.10	Speed limit zones along U.S. 46, including U.S. 1, 9 and 46, in Washington Township	26 N.J.R. 1959(a)	R.1994 d.383	26 N.J.R. 3184(b)
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16:28-1.25	Speed limit zones along Route 23 in Franklin Borough, Sussex County	26 N.J.R. 2749(a)		
16:28-1.41	School zone along U.S. 9 in Lower Township, Cape May County	26 N.J.R. 1765(b)	R.1994 d.354	26 N.J.R. 2913(a)
16:28-1.41	Speed limit zones along U.S. 9 in Ocean County	26 N.J.R. 1960(b)	R.1994 d.385	26 N.J.R. 3184(c)
16:28-1.41	Speed limit zones along U.S. 9 in Galloway Township, Atlantic County	26 N.J.R. 3132(a)		
16:28-1.69	Speed limit zones along U.S. 130, including parts of I-295, U.S. 30 and U.S. 206 in Salem County	26 N.J.R. 1766(a)	R.1994 d.362	26 N.J.R. 2913(b)
16:28-1.72	Speed limit zones along U.S. 206, including U.S. 206 and 130, in Morris County	26 N.J.R. 1961(a)	R.1994 d.386	26 N.J.R. 3185(a)
16:28-1.79	Speed limit zones along Route 94 in Sussex County	26 N.J.R. 3133(a)		
16:28-1.96	Speed limit zones along Route 45 in Gloucester County	26 N.J.R. 1962(a)	R.1994 d.387	26 N.J.R. 3185(b)
16:28-1.106	Speed limit zones along Route 31 in Clinton Township	26 N.J.R. 1963(a)	R.1994 d.388	26 N.J.R. 3186(a)
16:28-1.132	Speed limit zones along Route 47 in Middle Township	26 N.J.R. 1767(a)	R.1994 d.361	26 N.J.R. 2913(c)
16:28-1.132	Speed limit zones along Route 47 in Dennis Township, Cape May	26 N.J.R. 2867(a)		
16:28-1.182	Speed limits along Wyckoff Mills Road in Howell Township	26 N.J.R. 1767(b)	R.1994 d.358	26 N.J.R. 2914(a)
16:28-1.183	Speed limits along Frontage Road in Union Township, Hunterdon County	26 N.J.R. 1768(a)	R.1994 d.359	26 N.J.R. 2914(b)
16:28A-1.22	No stopping or standing zones along Route 31 in East Amwell Township	26 N.J.R. 1768(b)	R.1994 d.363	26 N.J.R. 2914(c)
16:28A-1.23	No stopping or standing zones along Route 33 in Manalapan Township	26 N.J.R. 1963(b)	R.1994 d.384	26 N.J.R. 3186(b)
16:28A-1.25	No stopping or standing zones along Route 35 in Berkeley Township	26 N.J.R. 2749(b)		
16:28A-1.28	Restricted parking and stopping along Route 40 in Hamilton Township, Atlantic County	26 N.J.R. 1769(a)	R.1994 d.360	26 N.J.R. 2914(d)
16:28A-1.33	Parking restrictions along Route 47 for entire length	26 N.J.R. 2867(b)		
16:28A-1.41	Time limit parking on Route 77 in Bridgeton: correction to proposal	25 N.J.R. 3944(a)		
16:28A-1.44	No stopping or standing zones along Route 88 in Lakewood Township, Ocean County	26 N.J.R. 3135(a)		
16:28A-1.57	No stopping or standing along U.S. 206 in Mount Olive	26 N.J.R. 2200(a)	R.1994 d.421	26 N.J.R. 3460(b)
16:28A-1.98	No stopping or standing zones along Route 56 in Deerfield Township, Cumberland County	26 N.J.R. 3136(a)		
16:28A-1.113	No stopping or standing zones along Route 33 (Business) in Manalapan Township	26 N.J.R. 1964(a)	R.1994 d.391	26 N.J.R. 3186(c)
16:30-3.11	Left turn lane along Route 38 in Lumberton and Southampton townships: correction to proposal and extension of comment period	26 N.J.R. 1317(a)		
16:30-7.3	Limited access prohibition along Route 55 Freeway in Cumberland, Salem, and Gloucester counties	26 N.J.R. 1769(b)	R.1994 d.355	26 N.J.R. 2915(a)
16:30-7.6	Limited access prohibitions along Route 18 Freeway in Monmouth and Middlesex counties	26 N.J.R. 1965(a)	R.1994 d.389	26 N.J.R. 3187(a)
16:30-7.7	Limited access prohibitions along Route 42 Freeway in Gloucester and Camden counties	26 N.J.R. 1964(b)	R.1994 d.390	26 N.J.R. 3187(b)
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16:50-15	Employer Trip Reduction Program tax credit	26 N.J.R. 756(a)		
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16:53	Autobuses	26 N.J.R. 1606(a)	R.1994 d.346	26 N.J.R. 2798(a)
16:53D	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:53D-1.1	Autobus carrier Zone of Rate Freedom	26 N.J.R. 3247(b)		
16:56	Airport safety improvement aid	26 N.J.R. 1607(a)	R.1994 d.372	26 N.J.R. 2916(a)
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17:16-63.11	State Investment Council: Common Pension Fund B realized appreciation	26 N.J.R. 1772(a)	R.1994 d.327	26 N.J.R. 2798(c)
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19:40-1.2	Removal of coin, slot tokens and slugs from slot machines	26 N.J.R. 1620(a)	R.1994 d.423	26 N.J.R. 3465(a)
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19:41-1.5A, 1.8, 1.9	Qualification standards for casino employees and gaming school instructors	26 N.J.R. 2207(a)	R.1994 d.447	26 N.J.R. 3746(b)
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