

**Federal Standards Statement**

The requirements in the rules proposed for readoption with amendments are not in excess of those imposed by Federal law. The rules implement various sections of Title IV-E of the Social Security Act, 42 U.S.C. §§ 671 et seq.

42 U.S.C. § 671(a)(10) requires that the State have a plan that provides for standards for foster homes, including standards for the protection of civil rights for any foster home receiving funds through Title IV-E. 42 U.S.C. § 671(a)(11) requires that the State have a plan that provides for the periodic review of these standards. These rules establish nondiscrimination standards to protect the civil rights of resource parent applicants, resource parents, and children in placement, at N.J.A.C. 10:122B-1.5. The rules proposed for readoption with amendments provide for the periodic review of the standards, as required by 42 U.S.C. § 671(a)11.

42 U.S.C. § 671(a)(18) prohibits a State from denying an applicant the opportunity to become an adoptive or foster parent or from denying or delaying the placement of a child for adoption or in a foster home on the basis of the race, color, or national origin of the adoptive or foster parent applicant, adoptive or foster parent, or child. 42 U.S.C. § 674(d)1 requires a graduated reduction in Federal payments under this title if 42 U.S.C. § 671(a)18 is violated by the State. These rules establish the Division’s application of these statutes to the New Jersey resource care program.

42 U.S.C. § 671(a)(20)(A) requires that the plan provide procedures for criminal records checks for foster and adoptive parent applicants. N.J.A.C. 10:122B-3.1 states the Division’s and the contract agency’s responsibilities in completing the criminal history checks.

42 U.S.C. § 671(a)(24) requires a State plan, which requires that a prospective foster parent applicant receive appropriate knowledge and skills to provide foster care, and that such knowledge and skills continue to be provided after a child is placed with the foster parent. N.J.A.C. 10:122B-5.1 requires that the Division provide pre-service training. N.J.A.C. 10:122B-4.1 requires that the Division or contract agency provide information and assistance to each licensed resource parent.

These rules supplement and do not exceed the Federal laws related to foster and adoptive care.

**Jobs Impact**

The Division does not expect that the rules proposed for readoption with amendments will result in the generation or loss of any jobs.

**Agriculture Industry Impact**

The rules proposed for readoption with amendments have no impact on the agriculture industry.

**Regulatory Flexibility Analysis**

Neither the Division, nor those receiving resource care from the Division, nor resource parents providing resource care to children under the Division’s supervision are considered a small business under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. The Division contracts with private not-for-profit social service agencies to provide resource care for children under the supervision of the Division. Some of these social service agencies are considered small businesses under N.J.S.A. 52:14B-16 et seq.

The rules require that the Division and contract agencies obtain and keep confidential all criminal history information obtained on resource parent applicants and adult household members at N.J.A.C. 10:122B-3.1(b) and (c). The Division is not differentiating between the Division and large social service agencies, and the agencies with which it contracts that are small businesses because the gathering of criminal history information is required by State statute, N.J.S.A. 30:4C-26.8 and 27.8. Obtaining criminal history information is necessary to protect the health, safety, and welfare of children who may be placed with the resource parents. The cost of obtaining criminal history record checks is covered by the Department when applicants are studied by either the Division or an agency under contract with the Division. No capital improvements are needed for the “small business” social service agencies to comply with this requirement. No professional services in addition to the professional services of social workers already employed by these agencies are needed to meet the requirements of this rule.

**Housing Affordability Impact Analysis**

The rules proposed for readoption with amendments have no impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average cost associated with housing, as these rules establish the Division’s procedures and requirements for resource homes.

**Smart Growth Development Impact Analysis**

The rules proposed for readoption with amendments have no impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey, as these rules establish the Division’s procedures and requirements for resource homes.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:122B.

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

SUBCHAPTER 1. GENERAL PROVISIONS

10:122B-1.3 Definitions

(a) (No change.)

(b) The following words and terms used in this chapter and in N.J.A.C. 10:122C, 10:122D, and 10:122E shall have the following meanings, unless the context clearly indicates otherwise:

...  
 “Division Director” means the Director of the Division of [Youth and Family Services] **Child Protection and Permanency**.

“Division representative” means a professional employee of the Division of [Youth and Family Services] **Child Protection and Permanency**.

...

10:122B-1.6 Dispute resolution

Any person included in the scope of [these rules] **this chapter**, as specified in N.J.A.C. 10:122B-1.2(a), shall refer to N.J.A.C. 10:120A, Dispute Resolution[, N.J.A.C. 10:120B, Hearings,] and N.J.A.C. 10:122C-2.5 to determine if he or she has any opportunity available to resolve a dispute with the Division [or a contract agency].

**(a)**

**DIVISION OF CHILD PROTECTION AND PERMANENCY**

**Services for Children in Out-of-Home Placement  
 Proposed Readoption: N.J.A.C. 10:122D**

Authorized By: Allison Blake, Ph.D., L.S.W., Commissioner,  
 Department of Children and Families.

Authority: N.J.S.A. 30:4C-4(h) and 30:4C-26a.

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

Proposal Number: PRN 2016-009.

Submit written comments by March 4, 2016, to:

Debra A. Hayes  
 Office of Policy and Regulatory Development  
 Division of Child Protection and Permanency  
 PO Box 717  
 Trenton, NJ 08625  
 or E-mail: [rules@dcf.state.nj.us](mailto:rules@dcf.state.nj.us)

The agency proposal follows:

**Summary**

As the Division of Child Protection and Permanency (Division) has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, N.J.A.C. 10:122D is scheduled to expire on December 2, 2015. Pursuant to N.J.S.A. 52:14B-5.1.c(2), this date is extended 180 days to May 30, 2016. The Division has reviewed these rules and has determined that they continue to be necessary, proper, and reasonable for the purpose for which they were originally promulgated, as required by Executive Order No. 66 (1978).

This chapter was first adopted in 1993 as part of the Division's development of rules in order to bring the Division into compliance with New Jersey State Supreme Court decisions, notably *Metromedia, Inc. v. Director, Division of Taxation*, 97 N.J. 313 (1984), and *Woodland Private Study Group v. State of New Jersey, Department of Environmental Protection*, 109 N.J. 62 (1987). The rules were readopted in 1997, 2003, and 2008, with amendments.

The purpose of this chapter is to set standards for the Division to follow in providing a child in out-of-home placement with family visits and various services while he or she is in out-of-home placement. The effect is to ensure that each child in out-of-home placement takes part in family visitation and receives needed services.

Rules promulgated by the Department's Office of Licensing address visitation and services, they specify the licensed shelter, group home, or residential child care facility's responsibilities. N.J.A.C. 10:122D specifies the Division's responsibility to ensure that children have visitation and services while in out-of-home placement, as well as the out-of-home placement provider's responsibility regarding services.

A summary of the rules proposed for readoption follows:

N.J.A.C. 10:122D-1.1 states the purpose of Subchapter 1, the purposes of visitation, and information about the frequency and duration of visits.

N.J.A.C. 10:122D-1.2 states the scope of Subchapter 1.

N.J.A.C. 10:122D-1.3 gives the definitions used in Subchapter 1.

N.J.A.C. 10:122D-1.4 states the requirements for the visitation plan.

N.J.A.C. 10:122D-1.5 states the standards for developing the visitation plan, including the time frames for plan development and revision, and who will participate in plan development.

N.J.A.C. 10:122D-1.6 states who receives a copy of the visitation plan.

N.J.A.C. 10:122D-1.7 provides for renegotiation of the visitation plan.

N.J.A.C. 10:122D-1.8 states the components of the visitation plan.

N.J.A.C. 10:122D-1.9 states suitable locations for visits.

N.J.A.C. 10:122D-1.10 states that visits are unsupervised unless the Division or the court determines the need for supervision and the reason for supervision is included in the visitation plan.

N.J.A.C. 10:122D-1.11 describes who may supervise visits, when necessary.

N.J.A.C. 10:122D-1.12 states the role of the Division representative in visits.

N.J.A.C. 10:122D-1.13 states transportation responsibility for the child in out-of-home placement, the parent, and other relatives.

N.J.A.C. 10:122D-1.14 states standards to be addressed in the visitation plan.

N.J.A.C. 10:122D-1.15 states the reasons when visits may be limited.

N.J.A.C. 10:122D-2.1 states the purpose of Subchapter 2.

N.J.A.C. 10:122D-2.2 states the scope of Subchapter 2.

N.J.A.C. 10:122D-2.3 states the definitions used in Subchapter 2.

N.J.A.C. 10:122D-2.4 states the case management services provided by the Division.

N.J.A.C. 10:122D-2.5 specifies what health care services must be provided, the role of the out-of-home placement provider, and what records must be kept for a child in out-of-home placement.

N.J.A.C. 10:122D-2.6 states the role of the Division and of the out-of-home placement provider in educational services, and the educational records that must be kept by the Division representative.

N.J.A.C. 10:122D-2.7 states that a plan to develop self-sufficiency skills in adolescent children in out-of-home placement must be written and carried out.

N.J.A.C. 10:122D-2.8 states that other individualized services needed by a child in out-of-home placement shall be arranged by the Division, as needed and as available.

### Social Impact

The effect of the rules proposed for readoption with amendments is to assure that each child in out-of-home placement has a written visitation plan specifying the type and frequency of family visits and receives specific services in accordance with his or her needs.

Those affected are the 3,381 children in non-kin resource care and their parents, the 2,932 children in kinship resource care and their parents, the 1,008 children in group, residential, shelter, and treatment home placements and their parents, and the 116 children in independent living and their parents. These figures are from July 31, 2015.

The Division anticipates a positive response from the public to these rules. The Division anticipates continued agreement with the substance of the rules.

The Division anticipates a positive social impact as the rules require regular and frequent visitation between a child in out-of-home placement and his or her family. Regular and frequent visitation improves the chances of securing a permanent home for the child. Having required, frequent visits with a child in out-of-home placement has a positive impact on the child's parents, who are assured of the opportunity to maintain contact with their children.

Ensuring that children receive the services that they need to develop properly is another positive social impact, which results from these rules.

By promulgating rules on these important subjects, the Division is guaranteeing to the public that services and family visitation are important and necessary parts of the Division's work with families.

### Economic Impact

These rules have no economic impact on the child in out-of-home placement, his or her parent, or the out-of-home placement provider. The services required by these rules: case management, health care, education, and self-sufficiency skills, are included in various governmental budgets, including the Federal budget, as well as those of the Division, the Division of Medical Assistance and Health Services, and local school districts throughout the State.

Visitation is part of the Division's case management responsibility. The amount of time devoted by the Division's staff to plan, transport, and supervise visits varies with each case.

Title IV-B of the Social Security Act, at 42 U.S.C. § 622(b)(8)(A)(iii), requires the State to have a plan to operate a service program designed to help children to return to families from which they have been removed.

42 U.S.C. § 622(b)(15) requires that the State Plan describes "... how the state actively consults with and involves physicians or other appropriate medical professionals in assessing the health and well-being of children in foster care under the responsibility of the state; and determining appropriate medical treatment for the children ..." These rules assist New Jersey to meet the requirements of Title IV-B. New Jersey's 2016 Title IV-B appropriation is \$10,831,000.

Under Title IV-E of the Social Security Act, 42 U.S.C. § 671(a)(15) requires that the State have a plan in which the State provides reasonable efforts so that a child in out-of-home placement can return home safely. These rules, at N.J.A.C. 10:122D-1, require visitation between children in out-of-home placement and their parents and relatives. Visitation is considered part of reasonable efforts.

Under Title IV-E of the Social Security Act, 42 U.S.C. § 671(a)(16) requires that each child receiving foster care maintenance payments funded in part by Title IV-E foster care money have a case plan. Information regarding the services provided to the child while in out-of-home placement, the child's health and education records, and information about services to prepare the adolescent in out-of-home placement for independent living is part of the case plan as defined in 42 U.S.C. § 675(l)(B), (C) and (D).

The rules requiring specific health and education records and information about services preparing children for independent living (which the rules call self-sufficiency skills), N.J.A.C. 10:122D-2.5, 2.6, and 2.7, assist the Division to meet the Federal requirements for receiving Federal financial participation for the costs of out-of-home placement.

42 U.S.C. § 671(a)22 requires that the State have a plan, which provides that children in out-of-home placement receive quality services to protect the safety and health of the children. These rules set standards for the services needed by children in out-of-home placement.

The Foster Care Independence Act of 1999, at 42 U.S.C. § 677(a)(1) through (4), provides funding to states to help children who are likely to remain in foster care until 18 years of age transition to self-sufficiency. The rules, at N.J.A.C. 10:122D-2.7, comply with the Federal requirements to provide services to children less than 18 years of age to become self-sufficient.

The Division's fiscal year (FY) 2016 Title IV-E Foster Care appropriation is \$96,531,000. The re-adoption of these rules affects the Division's budget as the rules assist the Division to meet the standards necessary to be eligible for Federal Title IV-E foster care funds.

#### Federal Standards Statement

The rules proposed for re-adoption are not in excess of those imposed by Federal law. Title IV-B of the Social Security Act, 42 U.S.C. § 622, requires that the State have a plan for child welfare services. 42 U.S.C. § 622(b)(8)(A)(iii) requires that plan to include assurances that the State is operating a service program to help children return to their families or to be placed for adoption, with a legal guardian, or in another permanent living arrangement. The rules proposed for re-adoption codify those services.

42 U.S.C. § 622(b)(15) requires that the State Plan describe "... how the State actively consults with and involves physicians or other appropriate medical professionals in assessing the health and well-being of children in foster care under the responsibility of the state; and determining appropriate medical treatment for the children ..." These rules state that involvement with medical professionals is required.

Title IV-E of the Social Security Act, 42 U.S.C. §§ 670 et seq., requires the State to have a plan, which requires that each foster child whose foster care payment is partially funded by Title IV-E funding be provided with numerous services.

42 U.S.C. § 671(a)(15)(B)(ii) requires that the State make reasonable efforts to return a child safely to the child's home. Reasonable efforts to return a child home include visits with the parents or other relatives who may provide a home for the child. The rules requiring visitation do not exceed the Federal requirements for reasonable efforts.

42 U.S.C. § 671(a)(16) requires that each child in foster care have a case plan. 42 U.S.C. § 675(1)(B), (C), and (D) define a case plan as including information about services to assure that the child can return to his or her own safe home or a permanent placement and to address the child's needs while in foster care, the child's health and education records, and information about services, which prepare the adolescent for independent living. These rules require the Division to provide services to each child in out-of-home placement and to maintain written health care, education, and self-sufficiency (that is, independent living) service records in keeping with the Title IV-E requirements.

42 U.S.C. § 671(a)(22) requires that the State develop and implement standards to ensure that children in foster care are provided quality services to protect the children's safety and health. N.J.A.C. 10:122D-2 requires that services are provided to meet the needs of a child in foster care, which is in keeping with the Federal requirement.

The rules comply with the Foster Care Independence Act of 1999, Pub. L. 106-169, 42 U.S.C. § 677, regarding self-sufficiency skills as part of the independent living program. N.J.A.C. 10:122D-2.7 coordinates with purposes of the John H. Chafee Foster Care Independence Program, 42 U.S.C. § 677(a)(1) through (4). To summarize, the purposes are to help children likely to remain in out-of-home placement until 18 years of age to become self-sufficient by providing services, helping them to receive education and training, helping them to enter postsecondary training and education institutions, and providing emotional support through mentors.

The rules proposed for re-adoption with amendments support and do not exceed Federal standards or requirements, and a Federal standards analysis is not required for this rulemaking.

#### Jobs Impact

The Division does not expect that the rules proposed for re-adoption will result in the generation or loss of any jobs.

#### Agriculture Industry Impact

The rules proposed for re-adoption have no impact on the agriculture industry.

#### Regulatory Flexibility Statement

Neither the Division, nor those receiving out-of-home placement from the Division, nor those providing resource care to children through the Division are considered a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. While some providers of group home and residential child care facility services may be small businesses under N.J.S.A. 52:14B-16 et seq., the rules proposed for re-adoption with amendments do not impose reporting, recordkeeping, or compliance requirements on small businesses. The rules proposed for re-adoption state the Division's policies and procedures for developing a visitation plan for a child in out-of-home placement and his or her family and describes the services that the Division shall provide to a child in out-of-home placement. Therefore, a regulatory flexibility analysis is not necessary.

#### Housing Affordability Impact Analysis

The rules proposed for re-adoption will have no impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average cost associated with housing, as these rules pertain to and govern the Division of Child Protection and Permanency's out-of-home services.

#### Smart Growth Development Impact Analysis

The Division does not anticipate that the rules proposed for re-adoption will have any impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey, because the rules pertain to the Division of Child Protection and Permanency's out-of-home services.

**Full text** of the rules proposed for re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:122D.

(a)

## DIVISION OF CHILD PROTECTION AND PERMANENCY

### Removal of Children in Placement from Resource Family Homes

### Proposed Re-adoption with Amendments: N.J.A.C. 10:122E

Authorized By: Allison Blake, Ph.D., L.S.W., Commissioner, Department of Children and Families.

Authority: N.J.S.A. 30:4C-4(h) and 30:4C-26.a.

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

Proposal Number: PRN 2016-010.

Submit written comments by March 4, 2016, to:

Debra A. Hayes  
Office of Policy and Regulatory Development  
Division of Youth and Family Services  
PO Box 717  
Trenton, New Jersey 08625  
or E-mail: [rules@dcf.state.nj.us](mailto:rules@dcf.state.nj.us)

The agency proposal follows:

#### Summary

Pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, N.J.A.C. 10:122E, Removal of Children in Placement from Resource Family Homes is scheduled to expire on December 2, 2015. Pursuant to N.J.S.A. 52:14B-5.1.c(2), this date is extended 180 days to May 30, 2016. The Division of Child Protection and Permanency (Division) has reviewed these rules and has determined that they continue to be necessary, proper, and reasonable for the purpose for which they were originally promulgated, as required by Executive Order No. 66 (1978).

The Department of Children and Families (Children) has provided a 60-day comment period on this notice of proposal. Therefore, this