

There is no need for provider agencies to employ outside professional services to comply with these provisions; nor is there any requirement for them to expend capital costs to comply with these rules. Any costs of compliance incurred by licensed agencies may be covered in the contracts between the agencies and the Division except for licensure fees. See the Economic Impact statement above for a discussion of fees and the potential for waiver thereof. The reporting, recordkeeping, and other compliance requirements imposed upon such agencies must be uniformly applied, regardless of the size of the agency, to ensure that individuals with mental illness receiving these services throughout the State do so in accordance with basic minimum standards of quality and effectiveness. These standards are important because the individuals with mental illness receiving these services typically have been psychiatrically hospitalized and would be at risk of additional costly and personally disruptive hospitalizations in the absence of quality community services delivered in accordance with these standards.

**Housing Affordability Impact Analysis**

The rules proposed for readoption have no impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules pertain to the Department’s mental health services licensing program.

**Smart Growth Development Impact Analysis**

The rules proposed for readoption will have an insignificant impact on smart growth. 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 Department’s mental health licensing program.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:190.

**CHILDREN AND FAMILIES**

**(a)**

**OFFICE OF LICENSING**

**Manual of Requirements for Adoption Agencies**

**Proposed Amendment: N.J.A.C. 10:121A-5.6**

Authorized By: Allison Blake, Ph.D., LSW, Commissioner,  
 Department of Children and Families.  
 Authority: N.J.S.A. 9:3-37 et seq., 30:1A-1 et seq., and 30:4C-4(b).  
 Calendar Reference: See Summary below for explanation of  
 exception to calendar requirement.  
 Proposal Number: PRN 2014-024.

Submit written comments by April 4, 2014, to:

Pamela Wentworth, MSW  
 Department of Children and Families  
 P.O. Box 717  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

As the Department of Children and Families (“Department” or “DCF”) 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.

The Department, pursuant to N.J.S.A. 9:3-37 et seq., 30:1A-1 et seq., and 30:4C-4(b), is authorized to certify private and public adoption agencies that are involved in the placement of children for adoption in New Jersey. N.J.A.C. 10:121A, Manual of Requirements for Adoption Agencies, specifies the rules governing the certification of adoption agencies.

The proposed amendment would modify a requirement in N.J.A.C. 10:121A-5.6(f)10 to bring it into conformity with the letter and intent of

New Jersey statute at N.J.S.A. 9:6-8.21. The physical abuse of children, including excessive corporal punishment, is not permitted in New Jersey, and that prohibition applies equally to all biological parents, adoptive parents, and other caretakers. The prior requirement that adoptive parents pledge to refrain from reasonable forms of corporal punishment was inconsistent with the universal applicability of State law.

The amended language requires that adoption agencies obtain agreement from adoptive parents to not use excessive corporal punishment as a means of discipline or otherwise engage in abusive or neglectful behavior pursuant to Title 9 of the New Jersey Statutes Annotated.

**Social Impact**

The proposed amendment eliminates an inequity in law that held adoptive parents to a more demanding standard on the use of corporal punishment, but continue to emphasize the State’s commitment to preventing the abuse of any child.

The Department expects that the proposed amendment will positively affect the public, particularly families seeking to adopt a child.

**Economic Impact**

The proposed amendment does not have a direct economic impact on adoptive applicants, licensed adoptive applicants, adoptive parents, birth parents, or birth family members.

**Federal Standards Statement**

No Federal standards analysis is required as there are no Federal standard applicable to the proposed amendment.

**Jobs Impact**

The Department anticipates that the proposed amendment will not result in the generation or loss of any jobs.

**Agriculture Industry Impact**

The proposed amendment will have no impact on the agriculture industry.

**Regulatory Flexibility Analysis**

The proposed amendment will affect some 40 in-State adoption agencies that are regulated by the Department, and 30 certified agencies based in other states that are approved to conduct adoption services in New Jersey. All of these adoption agencies fall within the definition of a small business, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed amendment does not impose any reporting or recordkeeping requirements on adoption agencies. The amendment does create a compliance requirement in that adoption agencies will be required to obtain agreement from prospective adoptive parents to refrain from the use of excessive corporal punishment or other abusive behavior, however, this requirement simply clarifies rather than replaces the previous requirement that these agencies obtain agreement from prospective parents to refrain from all forms of corporal punishment.

**Housing Affordability Impact Analysis**

The proposed amendment will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the amendment would evoke a change in the average costs associated with housing because the proposed amendment concerns adoption agencies and securing agreement from prospective parents to refrain from conduct that is already prohibited by law.

**Smart Growth Development Impact Analysis**

The proposed amendment has no impact on smart growth and there is an extreme unlikelihood that the rule 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 proposed amendment concerns adoption agencies and securing agreement from prospective parents to refrain from conduct that is already prohibited by law.

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

## SUBCHAPTER 5. SERVICES

## 10:121A-5.6 Home study services

(a)-(e) (No change.)

(f) The agency shall obtain information on the applicants. Such information shall include, but not be limited to:

1.-9. (No change.)

10. Each parent's agreement [that corporal punishment, including hitting and shaking, as well as abusive language and ridicule are unacceptable means of discipline] **not to use excessive corporal punishment as a means of discipline or otherwise engage in abusive or neglectful behavior pursuant to Title 9 of the New Jersey Statutes Annotated;**

11.-19. (No change)

(g)-(y) (No change.)

## LAW AND PUBLIC SAFETY

### (a)

#### DIVISION ON CIVIL RIGHTS

##### Employment Advertising

##### Proposed Readoption with Amendments: N.J.A.C. 13:11

Authorized By: Craig Sashihara, Director, Division on Civil Rights.

Authority: N.J.S.A. 10:5-6, 10:5-8.g, and 10:5-12.

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

Proposal Number: PRN 2014-021.

Submit comments by April 4, 2014, to:

Estelle Bronstein, Assistant Director  
Department of Law and Public Safety  
Division on Civil Rights  
PO Box 89  
Trenton, NJ 08625-0089

The agency proposal follows:

#### Summary

The New Jersey Division on Civil Rights (DCR), in the Department of Law and Public Safety, enforces the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to 49. Pursuant to N.J.S.A. 52:14B-5.1.c(2), DCR's rules concerning Employment Advertising, N.J.A.C. 13:11, are set to expire on June 25, 2014. DCR has reviewed these rules and determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. However, pursuant to its rulemaking authority found at N.J.S.A. 10:5-8, DCR proposes amendments to N.J.A.C. 13:11 to ensure consistency with recent amendments to the LAD and relevant case law, and to delete outdated and redundant provisions.

The LAD makes it unlawful for employers, employment agencies, and labor organizations to print or circulate or cause to be printed or circulated any statement, advertisement, or publication that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, creed, color, national origin, ancestry, nationality, age, sex, marital status, civil union status, domestic partnership status, affectional or sexual orientation, gender identity or expression, disability, atypical hereditary cellular or blood trait, genetic information, refusal to submit to a genetic test or to make available the results of a genetic test, or liability for service in the Armed Forces of the United States, unless based upon a bona fide occupational qualification. See N.J.S.A. 10:5-12.a and 10:5-12.c.

The chapter being proposed for readoption addresses these prohibitions and clarifies that newspapers and other publications are prohibited from publishing discriminatory employment advertisements. The New Jersey Supreme Court has held that newspapers and other publications are properly subject to these rules, because they would be aiding and abetting discriminatory employment advertising by publishing

discriminatory ads in their publications. See *Passaic Daily News v. Blair*, 63 N.J. 474, 488 (1973); N.J.S.A. 10:5-12.e.

The following is a summary of N.J.A.C. 13:11 and the proposed amendments.

N.J.A.C. 13:11-1.1(a) and (b), 1.4(c) and (d), and 1.5(a) (summarized individually below) all include lists of the characteristics protected by the LAD. DCR proposes to amend each of these subsections to add two protected characteristics that were added to N.J.S.A. 10:5-12.c after the most recent amendments to the chapter: "civil union status" and "gender identity or expression."

N.J.A.C. 13:11-1.1 sets forth the general rules prohibiting discriminatory employment advertising. Subsection (a) prohibits employers, labor unions, employment agencies, newspapers, or other publications from printing, publishing, or circulating any print, electronic, or other advertisement relating to employment that expresses, either directly or indirectly, any discrimination or preference based on characteristics protected by the LAD. Subsection (b) prohibits the use of any term, phrase, or expression in an advertisement that is meant to attract or deter any person because of a LAD-protected characteristic.

Subsection provides examples of certain phrases regarding equal opportunity that are deemed not to violate the rules.

Other than adding the recently added protected characteristics, DCR proposes no additional amendments to this section.

N.J.A.C. 13:11-1.2 sets forth an exception to the rules for advertising ordered by the DCR Director.

N.J.A.C. 13:11-1.3 addresses the use of gender-neutral job titles in advertisements and prohibits use of any language in advertisements expressing a limitation or preference based on a LAD-protected characteristic, except where the protected characteristic is a bona fide occupational qualification (BFOQ). The section heading of this rule, "preferences expressed in column heading or body of advertisement," is intended to show that the employment advertising rules apply to both the heading and body of any advertisement. Because "column heading" may be interpreted to apply only to traditional print publications, DCR proposes to amend the section heading to substitute "category" for "column," as this is more inclusive of electronic publication formats, and to add "label or job title" to more broadly encompass the designations that may define the scope of employment advertisements.

As subsection (a) is virtually identical to N.J.A.C. 13:11-1.1(a), DCR proposes to amend this subsection by adding new language that more directly addresses the purpose of this subsection: to ensure that limitations or preferences in headings, titles, and categories in publications or advertisements are deemed LAD violations. DCR proposes to substitute language that more clearly and succinctly states that the LAD prohibits discriminatory language in headings, titles, and categories. Subsection (b) is proposed for amendment to clarify that "those provisions" means "N.J.A.C. 13:11-1.4." DCR proposes deleting subsection (e), because the 2007 amendments to this section made this subsection irrelevant. Subsection (e) refers to "the above partial list," but that partial list of examples of prohibited titles and permissible substitutes was deleted from subsection (d) in 2007. It appears that it was an oversight to retain subsection (e) when that list was deleted in 2007.

N.J.A.C. 13:11-1.4 defines the scope of a narrow exception to the LAD. This section permits advertisements to solicit applicants of a particular protected characteristic when that characteristic is a BFOQ for a specific job or employment-related opportunity. In some cases, an employer may be able to show the need for a BFOQ exception where, for example, an employer needs to hire an actor of a particular gender or race for authenticity in a role. DCR proposed a technical amendment to subsection (a) to clarify that "these provisions" means "this chapter." DCR also proposes to amend paragraph (d)3 to correct a typographical error: instead of "reference," the sentence was intended to state "[c]ustomer, client, co-worker, or employer preference ..."

DCR also proposes to amend subsection (e) to clarify the circumstances in which a gender-based BFOQ may be applicable for jobs involving intimate personal contact with persons of the opposite sex, consistent with court decisions addressing gender-based BFOQs. This subsection currently states that a gender-based BFOQ exception may be warranted "where the job in question necessarily involves intimate personal contact with persons of the opposite sex." Relevant court