

HUMAN SERVICES

DIVISION OF AGING SERVICES

AREA AGENCY ON AGING ADMINISTRATION

Statewide Respite Care Program

Proposed Readoption with Amendments: N.J.A.C. 10:164B

Authorized By: Elizabeth Connolly, Acting Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4F-7 et seq., particularly 30:4F-12; and P.L. 2012, c. 17, P.L. 2014, c. 29, and P.L. 2015, c. 259.

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

Proposal Number: PRN 2017-015.

Submit written comments by March 18, 2017, electronically to DoAS.Legal@dhs.state.nj.us or

by regular mail to:

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Division of Aging Services

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The agency proposal follows:

Summary

The Department of Human Services (Department) proposes to readopt with amendments N.J.A.C. 10:164B, the rules governing the Statewide Respite Care Program. In accordance with N.J.S.A. 52:14B-5.1, N.J.A.C. 10:164B was scheduled to expire on December 17, 2016.

Pursuant to N.J.S.A. 52:14B-5.1.c(2), the filing of this notice of proposal with the Office of

Administrative Law prior to the expiration date extends the expiration date of this chapter by 180 days to June 15, 2017. The Department has met with stakeholders, has reviewed N.J.A.C. 10:164B, and has determined that, with the proposed amendments, the rules are necessary, adequate, reasonable, efficient, understandable, and responsive to the purposes for which they were originally promulgated. The Department, therefore, proposes to readopt the chapter and proposes certain amendments.

The Department of Human Services (Department) originally had authority over the Statewide Respite Care Program (Program) pursuant to N.J.S.A. 30:4F-7 et seq. The Department proposed new rules to establish the regulatory framework to implement and operate the Program at N.J.A.C. 10:69C on September 21, 1987. See 19 N.J.R. 1712(a). The Department recodified the new rules from N.J.A.C. 10:69C to 10:14 and adopted the new rules as R.1988 d.226, effective May 16, 1988. See 20 N.J.R. 1107(a). The Department readopted the rules with amendments at N.J.A.C. 10:14, effective May 7, 1993, for the readopted rules and June 7, 1993, for the amendments. See 25 N.J.R. 876(a); 2557(b).

On May 2, 1996, Governor Christine Todd Whitman issued Reorganization Plan No. 001-1996 (see 28 N.J.R. 2655(a)), which provided for the transfer, consolidation, and reorganization of all senior services, including the Program, within the Department of Health and Senior Services (DHSS). On November 3, 1997, DHSS adopted the recodification of Department chapters at Titles 5 and 10 of the New Jersey Administrative Code to DHSS chapters at Title 8 due to the change in jurisdiction. See 29 N.J.R. 4679(a). DHSS recodified the Program rules from N.J.A.C. 10:14 to 8:82.

DHSS readopted N.J.A.C. 8:82 with amendments effective May 7, 1998, for the readopted rules and June 1, 1998, for the amendments. See 30 N.J.R. 624(a); 2001(a).

On June 16, 2003, DHSS proposed to readopt N.J.A.C. 8:82 with amendments and recodifications. See 35 N.J.R. 2633(a). However, N.J.A.C. 8:82 expired on November 3, 2003, before DHSS could readopt the rules and adopt the amendments and recodifications. Effective July 6, 2004, DHSS adopted the expired rules at N.J.A.C. 8:82 as new rules.

DHSS readopted N.J.A.C. 8:82 with amendments effective December 17, 2009, for the readopted rules and January 19, 2010, for the amendments. See 41 N.J.R. 2874(a); 42 N.J.R. 478(a).

Effective July 1, 2012, the functions, powers, and duties of the Division of Aging and Community Services in DHSS (now known as the Department of Health) were transferred to the newly established Division of Aging Services in the Department of Human Services. See P.L. 2012, c. 17. Consequently, the authority for the Program was transferred back to the Department and, as a result thereof, the rules for the Program were recodified from N.J.A.C. 8:82 to 10:164B administratively, effective June 16, 2014. See 46 N.J.R. 1643(a).

P.L. 2015, c. 289, approved January 19, 2016, provides for certain amendments concerning the Program. The legislation includes a definition for the term “eligible veteran” and amends the Program eligibility requirements for eligible veterans. Also, P.L. 2014, c. 29, effective February 1, 2016, amended and supplemented P.L. 2002, c. 126, effective December 16, 2002, and imposes registration and accreditation requirements upon health care service firms. The Department proposes to amend the rules to address these new laws.

N.J.A.C. 10:164B contains eight subchapters. The following is a summary of those subchapters and the proposed amendments:

Subchapter 1 contains general provisions regarding the purpose, scope of service, and target population and sets forth the definitions of terms used in the chapter. The Department proposes

to amend N.J.A.C. 10:164B-1.4 to add the new term “eligible veteran” as a result of new statutory language and the new term “personal care” to reflect a service as part of respite care pursuant to N.J.S.A. 30:4f-8.h. The Department proposes to amend the term “respite” to clarify that homemaker services and personal care services are separate and distinct services and to include homemaker/home health aide services as a service available as part of respite care. The Department proposes to amend the term “homemaker services” to clarify the definition by deleting the reference to personal care and emphasizing that personal care is not included in such services. The Department also proposes to amend the term “homemaker/home health aide services” by deleting examples of personal care because the proposed amendments include a definition for the term “personal care.”

Subchapter 2 addresses the administrative organization.

Subchapter 3 sets forth the application process for the Program. The Department proposes to amend N.J.A.C. 10:164B-3.3(a) to refer to the sponsor as the sponsor agency in order to maintain consistency throughout the chapter.

Subchapter 4 establishes eligibility for the Program. The Department proposes to add new N.J.A.C. 10:164B-4.1(a)5 to reflect a change in financial eligibility for eligible veterans, so that an eligible veteran would not be denied respite care services based on income or liquid resources if he or she does not exceed the financial eligibility limitations established in N.J.S.A. 30:4F-10. The Department also proposes to amend N.J.A.C. 10:164B-4.1(a)2 and 4 with a stylistic change removing parentheses.

Subchapter 5 contains the qualifications and requirements for Program sponsors and providers. In order to address the new registration and accreditation requirements imposed upon health care service firms, the Department proposes to amend N.J.A.C. 10:164B-5.2 by deleting

subsections (e), (g), (h), and (i) specifically pertaining to requirements for homemaker/home health aides, facilities utilized for Program services, private duty nurses, and agencies employing private duty nurses and replacing those subsections with new subsection (e), mandating all entities and persons utilized by the Program to possess any and all qualifications and credentials required by law as a precondition to conducting business.

Subchapter 6 establishes cost limitations and a co-payment fee scale. The Department proposes to add new N.J.A.C. 10:164B-6.1(d) to prohibit the use of Program services to duplicate or supplant existing services or resources available to the eligible person or his or her caregiver. The Department also proposes to amend N.J.A.C. 10:164B-6.2(a)1 with a stylistic change removing parentheses.

Subchapter 7 sets forth reimbursement and payment rates. Counties are no longer involved in rate setting for Alternate Family Care and Assisted Living services. The Department proposes to amend reimbursement rates to accurately reflect that the rates for Alternate Family Care, Assisted Living, and Nursing Facility Respite services are negotiated rates. The Department also proposes to include personal care services and homemaker services under the rate for homemaker/home health aide services in order to specify the rates for such services.

Subchapter 8 contains the appeal process.

As the Department is providing 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.

Social Impact

The Statewide Respite Care Program is a State-funded caregiver support program that provides intermittent or short-term relief to the unpaid caregiver of an eligible New Jersey resident. Currently, there are 1,192 individuals receiving respite services through the Program.

The rules proposed for readoption with amendments would assure that eligible individuals and their unpaid caregivers continue to receive relief and support through the Program without interruption.

The amendments proposed at N.J.A.C. 10:164B-1.4 and 4.1 would impact certain veterans. The proposed amendments would expand the financial eligibility limitations for an “eligible veteran” (as defined by N.J.S.A. 30:4F-8), so that an “eligible veteran” would not be denied eligibility for the Program based on income or liquid resources if his or her liquid resources do not exceed \$60,000 for a single person or \$80,000 for a couple. This expansion of financial eligibility would have a beneficial social impact on those eligible veterans.

The rules proposed for readoption with amendments have established and would continue to establish the minimum standards necessary to protect the health and safety of individuals served by the Program, thereby promoting successful operation and implementation of the Program throughout the State. The protection of functionally impaired individuals and their unpaid caregivers is an ongoing concern, especially with the increased demand for home care and respite services. The respite services available through the Program include, but are not limited to: companion or sitter services; homemaker and personal care services; adult day health services; short-term inpatient care in a licensed nursing facility, residential health care facility, or assisted living residence; adult family care arrangement or overnight camp program; private duty nursing; and peer support and training for caregivers.

The rules proposed for readoption with amendments have had and would continue to have a beneficial social impact on the individuals served by the Program. The care recipients have been able to receive supervised, comfortable care in their own homes or in a safe alternative setting. In addition, the Program has had and would continue to have a positive social impact on unpaid

caregivers because the respite care services often reduce stress and provide an alternative to nursing home placement of a functionally impaired person.

Economic Impact

The rules proposed for readoption have had and would continue to have a beneficial economic impact on the unpaid caregivers, the care recipients and, now as a result of the expanded financial eligibility limitations, certain veterans. The rules proposed for readoption with amendments have had and would continue to have a positive economic impact because the cost of the respite care services received through the Program is subsidized in part for those eligible persons who are required to make co-payments based on a sliding fee scale and the Program is subsidized completely for those eligible persons with minimal income according to the sliding fee scale. However, the funding is not always sufficient to serve all eligible persons and the maximum amount of respite services available is limited to \$4,500 per calendar year.

The rules proposed for readoption with amendments would amend the reimbursement rates for alternate family care services, assisted living services, and nursing facility respite services to the “negotiated” rate. This amendment would not have an adverse economic impact on providers because providers currently receive the negotiated rate for such services. This amendment is necessary, so that the rules accurately reflect the current rates.

The rules proposed for readoption with amendments also would amend the limitations of service under the Program to include the statutory prohibition of respite services that duplicate or supplant existing services or resources available. (See N.J.S.A. 30:4F-8.i). This amendment would not have an adverse economic impact on eligible persons or their providers because respite services would be available from another payment source.

The rules proposed for re Adoption with amendments would amend the definition of homemaker services to delete the reference to personal care. Homemaker services do not include personal (hands-on) care. This amendment would amend the definition, so that the definition accurately reflects the practices of the Program. Personal care would continue to be available through “homemaker/home health aide services.” Since there would be no change in the types of services available to the care recipient, there would be no adverse economic impact on eligible persons or their providers.

The economic impact on providers and sponsor agencies would not change. Providers and sponsor agencies, as a condition to operating their businesses, must comply with the law. Compliance costs to the providers would continue to be the same costs incurred in the ordinary course of their business. Compliance costs to sponsor agencies would continue to include administrative costs for maintaining the information and supporting documents submitted by applicants, submitting required reports to the Department and completing mailing relevant to the Program, as well as costs involved in the staff time necessary to make eligibility determinations. The Department believes that the rules proposed for re Adoption with amendments have had and would continue to have an overall positive economic impact on the providers of respite care services because the rules provide for funding for the services based on the availability of that funding. However, funding is not always sufficient to serve all of the eligible persons in each county and the expansion of eligibility for those eligible veterans may create the need for a waiting list, or the expansion of an existing waiting list, for the Program.

Federal Standards Statement

The rules for the Statewide Respite Care Program establish policies and requirements for the Program. The Program is completely State-funded. Therefore, there are no Federal standards

governing eligibility or services under the Statewide Respite Care Program since these are established by State law.

The rules rely upon the Supplemental Security Income (SSI) guidelines under section 1611(c)(1)(A) of the Social Security Act (42 U.S.C. § 1382), as increased pursuant to section 1617 of such Act (42 U.S.C. § 1382f). Pursuant to N.J.S.A. 30:4F-12, the Department is responsible for establishing standards for eligibility for respite care services and a sliding fee schedule for co-payments. The Department uses the SSI guidelines as a basis for measuring the income of applicants for respite care services, as relevant to the determination of eligibility and co-payment amount, because the guidelines are a reliable and accepted measure to weigh applicant income against the need for financial assistance in paying for services. The Social Security Administration uses the SSI guidelines to determine eligibility and monthly benefit amount for people with limited income and resources who have a disability, who are blind or who are age 65 or older. In addition, the proposed amendments would rely upon a disability ratings determination by the United States Department of Veterans Affairs in order to determine the eligibility of an “eligible veteran” as defined in N.J.S.A. 30:4F-8.k. The United States Department of Veterans Affairs uses the disability ratings determination to establish military benefits for certain veterans. Therefore, the Department uses the SSI guidelines, and proposes to use the disability ratings determination, without making any changes.

The Health Insurance Portability and Accountability Act of 1996, Pub.L. 104-191, and the regulations promulgated thereunder by the United States Secretary of Health and Human Services at 45 CFR Parts 160 and 164, known as the "Standards for Privacy of Individually Identifiable Health Information" (collectively referred to as "HIPAA"), apply to health information created or maintained by health care providers, health plans, and health care

clearinghouses. The Department has determined that it is a covered entity within the meaning of HIPAA and, therefore, must comply with HIPAA. To the extent that the Program involves protected health information subject to HIPAA, the rules proposed for readoption with amendments would meet, but not exceed, the requirements of HIPAA.

Except as described above, there are no Federal standards applicable to the subject matter of the rules proposed for readoption with amendments. Since any Federal requirements applicable to the rules are met, but not exceeded, no Federal standards analysis is required.

Jobs Impact

The Department does not anticipate that the rules proposed for readoption with amendments would have an impact on employment in New Jersey. The rules proposed for readoption with amendments would continue the requirements imposed upon sponsor agencies and providers participating in the Statewide Respite Care Program. The proposed amendments merely reflect the new statutory requirements for registration and accreditation imposed upon health care service firms pursuant to N.J.S.A. 34:8-45.1. Furthermore, the rules proposed for readoption with amendments would not result in the loss of jobs in the State and would preserve existing jobs for providers participating in the Program.

Agriculture Industry Impact

The rules proposed for readoption with amendments are not expected to have an impact on the agriculture industry.

Regulatory Flexibility Analysis

There are 19 sponsor agencies and approximately 100 respite care providers that participate in the Statewide Respite Care Program, some of which are considered small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for

readoption with amendments have imposed and would continue to impose reporting, recordkeeping, and/or compliance requirements on the participating sponsor agencies and providers, regardless of size. Sponsor agencies and providers would not need to retain any additional services to comply with the rules proposed for readoption with amendments. The proposed amendments would impose new requirements, but such requirements are limited to the new statutory requirements for registration and accreditation imposed upon health care service firms pursuant to N.J.S.A. 34:8-45.1. The rules proposed for readoption with amendments would require providers to comply with the standards necessary to conduct business or render services.

Pursuant to N.J.A.C. 10:164B-3.1, sponsor agencies would continue to be responsible for receiving applications for the Program, determining eligibility, and providing written notice to eligible persons advising of a termination, reduction, or suspension of services and the right to appeal. Pursuant to N.J.A.C. 10:164B-5.1, sponsor agencies also would continue to be responsible for determining the maximum number of eligible persons to be served in its county based upon the Department's financial allocation, verifying income of the applicants, and their ability to contribute to the cost of the Program and submitting monthly, quarterly, and annual reports to the Department on service and financial data. Providers, pursuant to N.J.A.C. 10:164B-5.2, would continue to be responsible to subcontract with sponsor agencies to provide services under the Program, agree to provide services at the rates established by the Department, and possess and maintain the credentials as required by law to render the types of services available through the Program. N.J.A.C. 10:164B-5.2(e) would be amended to replace specific licensing and registration requirements with general requirements imposed by law. This general requirement would include the requirements imposed by N.J.S.A. 34:8-45.1, which requires

certain entities placing or arranging for the placement of personnel to provide companion services, health care, or personal care services in the homes of elderly persons or persons with a disability to be registered as a Health Care Service Firm with the Division of Consumer Affairs in the Department of Law and Public Safety.

Sponsor agencies and providers have been and would continue to be the types of businesses affected by this chapter. The cost to small businesses to comply with the rules proposed for readoption with amendments have been and would continue to be the same as the costs imposed on all sponsor agencies and providers generally. As the reporting, recordkeeping, and compliance requirements are necessary for participation by sponsor agencies and providers in the Statewide Respite Care Program, and are of paramount importance in promoting the health, welfare, and safety of individuals participating in the Program, no lesser requirements or exemptions can be provided for small businesses.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments would have no impact on the affordability of housing or the average costs associated with housing in New Jersey because the rules pertain to the Statewide Respite Care Program, which assists unpaid caregivers with the provision of and payment for intermittent or short-term respite care for eligible adults who are functionally impaired.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments would have no impact on smart growth or 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 Statewide

Respite Care Program, which assists unpaid caregivers with the provision of and payment for intermittent or short-term respite care for eligible elderly and disabled persons.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:164B.

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

SUBCHAPTER 1. GENERAL PROVISIONS

10:164B-1.4 Definitions

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

...

“Eligible veteran” means a person with a functional impairment arising out of service in the active military or naval service of the United States in any war or conflict on or after September 11, 2001, who has been honorably discharged or released from that service under conditions other than dishonorable, and meets the requirements for total disability ratings for compensation based upon unemployability of the individual as determined by the United States Department of Veterans Affairs.

...

“Homemaker/home health aide services” means services which include personal care [(that is eating, grooming, hygiene and toileting)], household tasks, and activities provided to eligible persons in their homes.

“Homemaker services” means services which include [personal care,] household tasks[,] and activities provided to recipients in their homes [by a homemaker or home health agency], **but shall not include personal care.**

...

“Personal care” means services provided by a certified home health aide in assisting a person to attend to his or her bodily needs or functions, including, but not limited to, hygiene, grooming, eating, drinking, bed mobility, ambulation, and toileting.

...

“Respite” or “respite care” means the provision of temporary, short-term care for, or the supervision of, an eligible person on behalf of the caregiver in emergencies or on an intermittent basis to relieve the daily stress and demands of caring for the functionally impaired adult.

1. (No change.)

2. The term includes, but is not limited to, companion or sitter services; homemaker **services**; [and] personal care services; **homemaker/home health aide services**; adult day health services; short-term inpatient care in a licensed nursing facility, residential health care facility or assisted living residence; adult family care arrangement or overnight camp program; private duty nursing; and peer support and training for caregivers.

...

SUBCHAPTER 3. APPLICATION PROCESS

10:164B-3.3 Responsibilities in the application process

(a) The sponsor **agency** has the responsibility in the application process to:

1.-3. (No change.)

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

SUBCHAPTER 4. ELIGIBILITY

10:164B-4.1 Eligibility standards

(a) For the purpose of the Statewide Respite Care Program, an eligible person shall meet the following eligibility standards:

1. (No change.)

2. The maximum income level shall be 300 percent of the Federal Supplemental Security Income standard for an individual living alone, in effect under section 1611(a)(1)(A) of the Social Security Act, [(42 U.S.C. § 1382)], [(as increased pursuant to section 1617 of the Act, [(42 U.S.C. § 1382f))].

i. In the case of an individual and spouse, one of whom is an applicant for respite care, 50 percent of the couple's combined income shall be subject to this same income standard.

(1) Clients determined eligible prior to June 1, 1998 will not lose their eligibility upon redetermination for reasons set forth at (a)2i above[; or].

ii. (No change.)

3. An eligible person shall be a resident of the State of New Jersey; [and]

4. An eligible person shall have liquid resources, [(as declared by that individual)], that do not exceed \$40,000.

i. In the case of an individual and a spouse who are both dependent on the caregiver, the couple's combined liquid resources shall not exceed \$ 60,000[.]; **and**

5. Notwithstanding the provisions of this subsection or any other provision of law to the contrary, no eligible veteran shall be determined ineligible for the Statewide Respite Care Program based on income or liquid resources if he or she does not exceed the financial limits set forth in N.J.S.A. 30:4F-10.

SUBCHAPTER 5. SPONSORS AND PROVIDERS

10:164B-5.2 Qualifications and requirements for provider agencies

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

[(e) All individuals providing respite care which includes homemaker/home health aide or personal care services shall be certified homemaker/home health aides]

(e) All providers and their employees, workers, agents, and subcontractors utilized for the Statewide Respite Care Program shall possess any and all licenses, certifications, registrations, accreditations, qualifications, permits, and/or approvals required by law as a precondition to conduct the particular business or render the particular service.

(f) (No change.)

[(g) Each facility that is utilized for the Statewide Respite Care Program shall be licensed by the appropriate State licensing authority, if licensure is required in this State.

(h) Private duty nurses utilized by the Statewide Respite Care Program shall be:

1. Nurses employed by agencies licensed or registered by the New Jersey Division of Consumer Affairs, Department of Law and Public Safety, in accordance with N.J.S.A. 56:8-1.1, and 34:8-43 et seq., and N.J.A.C. 13:45B, as applicable; or

2. Nurses employed by home health agencies licensed by the Department of Health in accordance with N.J.A.C. 8:42.

(i) Agencies licensed or registered, pursuant to (h) above, that employ private duty nurses utilized by the Statewide Respite Care Program shall be accredited by an accreditation program, set forth below, as applicable to the agency:

1. Community Health Accreditation Program (CHAP)
1300 19th Street, Suite 150
Washington, DC 20036;
2. Commission on Accreditation for Home Care (CAHC)
154 South Street, 2nd Floor
New Providence, NJ 07974; or
3. National Association for Home Care and Hospice (NAHCH)
228 Seventh Street, SE
Washington, DC 20003.]

SUBCHAPTER 6. COST LIMITATIONS AND CO-PAYMENT FEE SCALE

10:164B-6.1 Service and cost limitations for eligible persons

(a)-(c) (No change.)

(d) Respite services shall not be used to duplicate or supplant existing services or resources available to the eligible person and his or her caregiver.

10:164B-6.2 Sliding fee scale for co-payments

(a) Co-payment fees shall apply to eligible persons rendered respite care services in accordance with the co-payment fee scale set forth in (b) below.

1. In all cases the point at which cost-sharing shall be initiated will be based upon the most current Supplemental Security Income (SSI) guidelines in effect under section

1611(c)(1)(A) of the Social Security Act, [(42 U.S.C. § 1382)], [(as increased pursuant to section 1617 of the Act, [(42 U.S.C. § 1382f))].

2. (No change.)

(b)-(h) (No change.)

SUBCHAPTER 7. REIMBURSEMENT AND PAYMENT

10:164B-7.1 Reimbursement

(a) (No change.)

(b) The rates for the various types of respite services are as follows:

<u>Service</u>	<u>Reimbursement Amount</u>
Adult Day Health Services	Medicaid Rate
Alternate Family Care	Negotiated [County] Rate
Assisted Living	Negotiated [County] Rate
Campership	\$ 90.00 per day
Companion Services	\$ 12.00 per hour/weekday \$ 13.00 per hour/weekend
Homemaker/Home Health Aide Services, Personal Care Services, and Homemaker Services	\$ 17.00 per hour/weekday \$ 18.00 per hour/weekend/holiday \$ 120.00 per 12-hour block \$ 140.00 per 24-hour block
Hospital Inpatient Respite	Medicaid Rate

Nursing Facility Respite	[Medicaid] Negotiated Rate
Private Duty Nursing	Medicaid Rate
Social Adult Day Care	\$ 45.00 per day
Residential Health Care	\$ 60.00 per day
Facility Respite	