

process is designed to benefit consumers and their burden of proof is a fundamental element of fairness in that process, no lesser requirements or exceptions can be provided based upon a consumer's status as a small business.

#### Housing Affordability Impact Analysis

The rules proposed for readoption 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 costs associated with housing because the rules pertain to procedures for contested case hearings related to Lemon Law hearings.

#### Smart Growth Development Impact Analysis

The rules proposed for readoption will have no impact on the number of housing units or the availability of affordable housing in the State, and will have no effect on smart growth development in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The rules set forth procedures for contested case hearings related to Lemon Law hearings.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 1:13A.

## (a)

### OFFICE OF ADMINISTRATIVE LAW

#### Notice of Extension of Comment Periods for Certain Notices of Proposal Published in the June 20, 2016, New Jersey Register

**Take notice** that, with the permission and on behalf of the State agencies affected, the Office of Administrative Law announces that the comment periods for the notices of proposal from the Department of Community Affairs; the Department of Environmental Protection; the Department of Human Services; the Department of Insurance; the Department of Law and Public Safety; and the Motor Vehicle Commission; and the notice of pre-proposal from the Department of Community Affairs, published in the June 20, 2016, New Jersey Register are hereby extended an additional 7 days. The extension of these comment periods is necessitated by a disruption in the mail delivery of that issue of the New Jersey Register, in order to provide the public with the amount of time to comment set forth in the notices of proposal and notice of pre-proposal.

The affected notices of proposal and pre-proposal, in Code title order, are as follows, with the new comment deadlines and comment addresses included:

Department of Community Affairs; Division of Local Government Services; Local Finance Board, Pre-Proposed Amendments: N.J.A.C. 5:30-5.3 through 5:30-5.5, 48 N.J.R. 991(a). Please submit written comments on the notice of pre-proposal by July 27, 2016, in writing or via e-mail to: Patricia Parkin McNamara, Executive Secretary, Local Finance Board, Department of Community Affairs, PO Box 803, Trenton, New Jersey 08625-0803, [dlegs@dca.nj.gov](mailto:dlegs@dca.nj.gov) (for comments submitted via e-mail, please place in the subject heading "N.J.A.C. 5:30 Certification of Available Funds Pre-Proposal").

Department of Community Affairs; Division of Housing and Community Resources; Proposed Amendments: N.J.A.C. 5:51-1.2, 1.3, 1.4, and 1.5 and Proposed Repeals: N.J.A.C. 5:51-1.1 and 1.6, 48 N.J.R. 994(a). Submit written comments by August 26, 2016, to: Gabrielle N. Gallagher, Department of Community Affairs, PO Box 800, Trenton, New Jersey 08625-0800, Fax No. (609) 984-6696, E-mail: [Gabrielle.Gallagher@dca.nj.gov](mailto:Gabrielle.Gallagher@dca.nj.gov).

Department of Environmental Protection; Division of Forestry; New Jersey Board of Tree Experts; Proposed New Rules: N.J.A.C. 7:3A, 48 N.J.R. 995(a). Submit comments by August 26, 2016, electronically at [nitreexperts@gmail.com](mailto:nitreexperts@gmail.com). The Board of Tree Experts (Board) encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to: Board of Tree Experts, 101 West Veterans Highway Jackson, NJ 08527.

Department of Environmental Protection; Land Use Management; Proposed Amendments: N.J.A.C. 7:7-6.4, 15.2 and 25.1; 7:7A-11.1; and 7:13-1.2, 6.7, 7.8 through 7.12, 7.29, 7.56, 7.58, 7.61, 8.5, 8.6, 8.8, 8.13, 9.5, 9.6, 9.8 through 9.10, 11.2, 12.5, 12.14, 13.1, 13.2, 13.6, 13.7, 13.8, 13.14 through 13.20, and 20.1; and Proposed New Rule: N.J.A.C. 7:13-13.4; 48 N.J.R. 1014(a). Submit comments by August 26, 2016, electronically at <http://www.nj.gov/dep/rules/comments>. The Department of Environmental Protection (Department) encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to: Gary J. Brower, Esq., Attn: DEP Docket Number 05-16-05, New Jersey Department of Environmental Protection, Office of Legal Affairs, Mail Code 401-04L, 401 East State Street, 7th Floor, PO Box 402, Trenton, NJ 08625-0402; This rule proposal may be viewed or downloaded from the Department's website at <http://www.nj.gov/dep/rules>.

Higher Education; Secretary of Higher Education; Proposed Readoption with Amendments: N.J.A.C. 9A:11; 48 N.J.R. 1037(b). Submit comments by August 26, 2016, to: Audrey Bennerson, Administrative Practice Officer, Office of the Secretary of Higher Education, 20 West State Street, 4th floor, PO Box 542, Trenton, New Jersey 08625-0542, E-mail: [Audrey.bennerson@oshe.nj.gov](mailto:Audrey.bennerson@oshe.nj.gov).

Department of Human Services; Office of Administration; Proposed Readoption N.J.A.C. 10:3; 48 N.J.R. 1043(a). Submit comments by August 26, 2016, to: Amy Keys Shaw, Office of Contract Policy and Management, Department of Human Services, 222 South Warren Street, PO Box 700, Trenton, New Jersey 08625-0700, e-mail: [amy.shaw@dhs.state.nj.us](mailto:amy.shaw@dhs.state.nj.us).

Department of Human Services; Division of Family Development; Proposed Amendments: N.J.A.C. 10:87-5.9 and 10:90-1.2, 2.1, and 5.9, and Proposed Repeals: N.J.A.C. 10:90-17; 48 N.J.R. 1044(a). Submit comments by August 26, 2016, to: Miguel Mendez, Administrative Practice Officer, Division of Family Development, PO Box 716, Trenton, New Jersey 08625-0716, E-mail: [Miguel.Mendez@dhs.state.nj.us](mailto:Miguel.Mendez@dhs.state.nj.us).

Department of Banking and Insurance; Division of Property and Casualty; Proposed Amendments: N.J.A.C. 11:3-6.1; Proposed Repeals: N.J.A.C. 11:3-6.2, 6.3, and 6.4; and Proposed New Rules: N.J.A.C. 11:3-6.2, 6.3, 6.4, and 6.5; 48 N.J.R. 1046(a). Submit comments by August 26, 2016, to: Denise M. Illes, Chief, Department of Banking and Insurance, Legislation and Regulation, 20 West State Street, PO Box 325, Trenton, NJ 08625-0325, Fax: (609) 292-0896, E-mail: [Legsregs@dobi.nj.gov](mailto:Legsregs@dobi.nj.gov).

Department of Banking and Insurance; Division of Insurance; Proposed Readoption with Amendments: N.J.A.C. 11:6; Proposed Repeal and New Rule: N.J.A.C. 11:6-2.9; 48 N.J.R. 1049(a). Submit comments by August 26, 2016, to: Denise M. Illes, Chief, Department of Banking and Insurance, Legislation and Regulatory Affairs, 20 West State Street, PO Box 325, Trenton, NJ 08625-0325, Fax: (609) 292-0896, E-mail: [Legsregs@dobi.nj.gov](mailto:Legsregs@dobi.nj.gov).

Department of Law and Public Safety; Division of Consumer Affairs; New Jersey Board of Nursing; Proposed Amendment; N.J.A.C. 13:37-7.10; 48 N.J.R. 1059(a). Submit written comments by August 26, 2016, to: Joanne Leone, Acting Executive Director, State Board of Nursing, PO Box 45010, Newark, New Jersey 07101, or electronically at: <http://www.njconsumeraffairs.gov/Proposals/Pages/default.aspx>.

Department of Law and Public Safety; Division of Consumer Affairs; Audiology and Speech-Language Pathology Advisory Committee; Proposed Amendment; N.J.A.C. 13:44C-6.2; 48 N.J.R. 1059(b). Submit written comments by August 26, 2016, to: Renee Clark, Executive Director, Audiology and Speech-Language Pathology Advisory Committee, Division of Consumer Affairs, 124 Halsey Street PO Box 45010, Newark, New Jersey 07101, or electronically at: <http://www.njconsumeraffairs.gov/Proposals/Pages/default.aspx>.

Motor Vehicle Commission; Licensing Service; Proposed Amendments: N.J.A.C. 13:21-15; 48 N.J.R. 1052(a). Submit comments by August 26, 2016, to: Kate Tasch, Administrative Practice Officer, Regulatory and Legislative Affairs, Motor Vehicle Commission, 225 East State Street, PO Box 160, Trenton, NJ 08666-0160, or via e-mail to: [rulecomments@mvc.nj.gov](mailto:rulecomments@mvc.nj.gov).

Motor Vehicle Commission, Regulatory Affairs (Commercial Passenger Transportation); Proposed Amendment; N.J.A.C. 16:53D-1.1; 48 N.J.R. 1061(a). Submit comments by August 26, 2016, to: Kate Tasch,

APO, Attention: Regulatory and Legislative Affairs, New Jersey Motor Vehicle Commission, 225 East State Street, PO Box 162, Trenton, NJ 08666-0162, or via e-mail to: [rulecomments@mvc.nj.gov](mailto:rulecomments@mvc.nj.gov).

## HUMAN SERVICES

### (a)

#### BUREAU OF GUARDIANSHIP SERVICES

##### Decision-Making for the Terminally Ill

##### Proposed Readoption with Amendments: N.J.A.C. 10:48B

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

Authority: N.J.S.A. 26:2H-53 et seq., and 26:6A-1 et seq.

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

Proposal Number: PRN 2016-112.

Submit comments by September 16, 2016, to:

Jessica Anastasi  
Bureau of Guardianship Services  
PO Box 705  
Trenton, NJ 08625-0705  
Fax: (609) 631-2215  
E-mail: [Jessica.Anastasi@dhs.state.nj.us](mailto:Jessica.Anastasi@dhs.state.nj.us)  
Delivery: 11A Quakerbridge Plaza  
Mercerville, NJ 08619

The agency proposal follows:

#### Summary

N.J.A.C. 10:48B, Decision-Making for the Terminally Ill, was scheduled to expire on June 15, 2016, pursuant to N.J.S.A. 52:14B-5.1. As the Department of Human Services (Department) has filed this notice prior to that date, the expiration date is extended 180 days to December 12, 2016, pursuant to N.J.S.A. 52:14B-5.1.c(2). The chapter provides specific ethical considerations related to decisions to continue or discontinue medical treatment for a terminally ill person with intellectual or developmental disabilities (ID/DD). Further, the chapter sets forth specific guidelines for the Bureau of Guardianship Services (BGS) when making these complex decisions on behalf of a person served. The Department has determined that the chapter should be readopted with technical amendments. The chapter remains relevant and effective, however, updates are necessary to remove outdated language, clarify specific provisions, and add references to new legislation.

The chapter contains eight subchapters as follows:

N.J.A.C. 10:48B-1, General Principles, addresses specific ethical considerations for the population served. Information regarding access to quality palliative care and a reference to the knowledge base of recognized ethics committee members.

N.J.A.C. 10:48B-2, Definitions, contains definitions for relevant terms contained in the chapter. The proposed amendments recognize that advanced practice nurses, as well as licensed physicians, may have primary responsibility for treatment and care of individuals covered by this chapter. Throughout the chapter, the term "attending physician" has been replaced with "treating practitioner." The Department is also adding a definition of Physician's Order for Life Sustaining Treatment (POLST). This proposed amendment implements the requirements P.L. 2011, c. 145. The definition of "hospice" changes the name of the Department of Health and Senior Services to the Department of Health, pursuant to P.L. 2012, c. 17.

N.J.A.C. 10:48B-3, Ethics Committees, describes the requirements of recognized ethics committees that may be used as consultation for end-of-life decision-making for terminally ill individuals with ID/DD. Proposed amendments to N.J.A.C. 10:48B-3.1 specify that no fewer than three committee members must participate in an ethics consultation.

N.J.A.C. 10:48B-4, Decision-Making Capacity, outlines the process of determining whether a terminally ill person has the capacity to make end-

of-life decisions. Further it explains the role of the attending medical practitioner in making this determination.

N.J.A.C. 10:48B-5, Individuals with Capacity to Make Medical Decisions, provides clarification that a person with capacity can independently make end-of-life decisions.

N.J.A.C. 10:48B-6, Individuals Without Capacity to Make Medical Treatment Decisions for whom BGS is Not Providing Guardianship Services. This subchapter provides guidelines for end-of-life decision-making when a surrogate decision-maker, other than BGS, is in place or is required.

N.J.A.C. 10:48B-7, Individuals Without Capacity to Make Medical Treatment Decisions for whom BGS is Providing Guardianship. This subchapter provides specific guidelines to the Bureau of Guardianship Services when making end-of-life decisions. The subchapter further describes the role of ethics committees and the procedures for rendering the decision. Proposed amendments specify that immediate family members and/or Disability Rights New Jersey (DRNJ) may object to end-of-life decisions. "Interested parties" is replaced with "immediate family" in N.J.A.C. 10:48B-7.4 and 7.5. This change is intended to limit who may/may not object to an end-of-life decision. The term interested parties was too broad, creating a situation that permitted potentially uninvolved people to object to decisions about end-of-life care. Allowing any interested party to object could potentially delay an imminent and critical decision and is not seen to be in the best interest of the person served. Using the term immediate family members will allow for better protections for the person served while affording family an opportunity to object to the decision based on their knowledge of and relationship with the person. The proposed amendments remove a reference to the Public Advocate as that office no longer exists.

N.J.A.C. 10:48B-8 Palliative care, describes types of palliative care and specific requirements that may exist.

As the Department 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.

#### Social Impact

Society has an interest in ensuring the soundness of the healthcare decision-making process, which includes both protecting vulnerable individuals from potential abuse or neglect and facilitating the exercise of informed and voluntary individual choice. The issue of providing medical intervention to individuals with developmental disabilities and terminal illnesses is complex. The rules proposed for readoption with amendments will help to assure a system to protect the rights of those individuals so that they receive the highest quality of end-of-life care. The rules proposed for readoption with amendments outline the role of the Department when the Bureau of Guardianship Services is involved in that process.

The rules proposed for readoption with amendments emphasize the special ethical considerations necessary when making a decision to withhold or withdraw care and provide a system that protects individual rights, autonomy, and access to medical care including palliative care.

#### Economic Impact

The rules proposed for readoption with amendments will not have an economic impact.

#### Federal Standards Statement

The rules proposed for readoption with amendments governing decision-making for individuals with terminal illnesses contain requirements that do not exceed those imposed by Federal law or regulation. The rules proposed for readoption with amendments are in compliance with the New Jersey Advance Directives for Health Care Act (N.J.S.A. 26:2H-53 et seq.), the Federal Patient Self-Determination Act (42 U.S.C. § 1395 cc (a)), the New Jersey Declaration of Death Act (N.J.S.A. 26:6A-1 et seq.) and the New Jersey POLST (N.J.S.A. 26:2H-129 (P.L. 2011, c. 145)).

The Department has reviewed the applicable Federal statute, the Federal Patient Self-Determination Act (42 U.S.C. § 1395 cc (a)), and has determined that the rules proposed for readoption with amendments do not exceed the Federal requirements.