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DIVISION OF CHILD PROTECTION AND PERMANENCY

Adoptions

Proposed Readoption with Amendments: N.J.A.C. 3A:23

Authorized By: Christine Norbut Beyer, M.S.W., Commissioner,
Department of Children and Families.

Authority: N.J.S.A. 9:3-54.1, 9:3A-7.f, 30:4C-4(h), and 30:4C-49.

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

Proposal Number: PRN 2019-015.

Submit written comments by March 23, 2019, to:

Debra A. Hayes
Department of Children and Families
PO Box 717
Trenton, New Jersey 08625
or rules@dcf.nj.gov

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1, Chapter 23, Adoptions, was scheduled to expire on December 7, 2018. Pursuant to N.J.S.A. 52:14B-5.1.c(2), this date is extended 180 days to June 5, 2019. The Division has reviewed these rules and has determined that, as proposed for amendment, they continue to be necessary, proper, and reasonable for the purpose which they were originally promulgated.

Chapter 23, Adoptions, was originally filed and became effective prior to September 1, 1969 as N.J.A.C. 10:121. Throughout the years this chapter was readopted with amendments and repeals.

Chapter 23 was last readopted effective December 7, 2011.

Chapter 23 was recodified from N.J.A.C. 10:121 to N.J.A.C. 3A:23 by administrative change, effective January 3, 2017 (see 49 N.J.R. 98(a)). As part of the recodification, attendant technical changes were made to the rule text cross-references, agency names, addresses, etc.

Chapter 23, Adoptions, was amended in December 2017, to be in compliance with the new and acceptable term for the former, "special needs child," to the current and acceptable term, "child with special needs." Additional amendments were made to bring the Department into greater compliance with the provisions at 42 U.S.C. § 673(c).

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.

N.J.A.C. 3A:23-1.1 outlines the definitions used throughout the chapter.

N.J.A.C. 3A:23-1.2 addresses determining that a child is a child with special needs.

N.J.A.C. 3A:23-1.3 outlines payments for the care and maintenance of a child with special needs (adoptions subsidy).

N.J.A.C. 3A:23-1.4 outlines the duration and amount of adoptions subsidy for an adopted child.

N.J.A.C. 3A:23-1.5 outlines other payments covered through Medicaid for a child receiving adoption subsidy.

N.J.A.C. 3A:23-1.6 outlines the exceptions to the requirements and standards in this chapter that may be subject to exceptions in specific cases.

N.J.A.C. 3A:23-1.7 outlines administrative hearings.

The Department of Children and Families proposes the following amendments to N.J.A.C. 3A:23.

The Department of Children and Families is proposing to amend language at N.J.A.C. 3A:23-1.2(a)2 by removing "having any physical handicap, by reason of physical defect or deformity" and replacing it with "living with a disability or impairment" and at paragraph (a)3, proposing to replace "having substantial disfigurement" with "living with substantial impairment." These amendments are proposed in compliance with the language used by Federal and community agencies who provide services to people living with disabilities or impairments.

The Department is proposing to amend language at N.J.A.C. 3A:23-1.3(b) by removing "[T]he eligibility for subsidy shall be subject to an annual review and redetermination," and replacing it with language to comply with the manner in which the Department currently addresses the annual redetermination for subsidy of an adopted child.

In accordance with the language in N.J.A.C. 3A:51, Manual of Requirements for Resource Family Parents, the Department is proposing to amend N.J.A.C. 3A:23-1.4(e) to change the outdated term "foster" to "resource," which is the appropriate term commonly used by the Department.

Social Impact

The Department believes the proposed amendments to N.J.A.C. 3A:23-1.2(a)2 and 3 will have a positive social impact on the population receiving or applying for adoption subsidy, as the change in terminology is keeping with the current language trends and provides a more positive outlook in how the Department views its clientele, many of whom may be living with a disability.

The Department further believes the proposed amendments at N.J.A.C. 3A:23-1.3(b) will have a better social impact on an adoptive parent currently receiving adoption subsidy for an adopted child, or any prospective adoptive parent, as the proposed amendments reduce the formality of the annual redetermination process, which diminishes personal recordkeeping, to encourage more adoptions.

The Department further believes the proposed amendments at N.J.A.C. 3A:23-1.4(e) of "foster" to "resource" will not have a significant social impact on an adoptive or prospective adoptive parent, as the change in terminology does not alter the board rates.

Collectively, the rules proposed for readoption with amendments will have a positive social impact on prospective and adoptive parents and their adopted children, as this chapter continues to provide necessary guidelines to regulate adoption subsidy, which permits the continued adoption for many children living with special needs, who might not otherwise have the opportunity to attain permanency.

Economic Impact

The families who adopt special needs children are assured a permanent subsidy and medical insurance to support the child until the child reaches age 18, provided those families continue to provide care for the child. The adoption subsidy board rate payments are fixed to the rate paid to care for children in resource care. Therefore, there is no financial disincentive to adoption. A family typically receives the same amount of financial support and medical insurance whether the family provides resource care to or adopts a child.

The Department processed an estimated five private adoption subsidy payments in fiscal year (FY) 2017. The cost for those five private subsidy payments totaled approximately \$66,580. For fiscal year 2019, Title IV-E allotted the Department of Children and Families \$77,515,000 for adoption subsidies.

The Department continues to provide subsidy to the private adoption agencies children receiving subsidy payments until each child reaches 18 years of age, provided that the family continues to maintain eligibility.

Federal Standards Analysis

The rules proposed for readoption with amendments are consistent with Title IV-E of the Social Security Act, 42 U.S.C. §§ 673 et seq., Adoption and Guardianship Assistance Program.

The Department exceeds Federal standards by operating an identical State-funded adoption subsidy program for children with special needs who are not eligible for the Title IV-E Adoption Assistance program, pursuant to N.J.S.A. 30:4C-45 through 49. This program ensures that all children with special needs have an equal opportunity to have a permanent adoptive family.

If the State-funded subsidy program were not available, the majority of these children would remain in the foster care system, to the detriment of their emotional well being and at an increased expense to the State. Not only would all of the direct costs paid through subsidy be incurred by the Division while the children are in resource care, but the administrative costs that arise from the supervision of these children in their foster homes would have to be assumed by the State as well. In addition, most children who are adopted are provided with a familial support system that assists

them emotionally and financially after they reach 18 and are no longer eligible for subsidy. The provision of the State subsidy program is neither administratively or financially onerous, as it utilizes the same technology as the Federal Title IV-E program.

Jobs Impact

The Division anticipates no impact, either positive or negative, on job creation due to the rules proposed for readoption with amendments.

Agriculture Industry Impact

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

Regulatory Flexibility Statement

Neither the Department nor the Department's clients, nor the adoptive parents who apply for or receive adoption subsidy payments are considered small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Agencies approved or licensed either by New Jersey or another state to provide adoption services may be small businesses. The rules proposed for readoption with amendments do not impose reporting, recordkeeping, or compliance requirements on any small businesses. The proposed amendments address changes to the nomenclature and the annual notice sent to each adoptive parent receiving subsidy for an adopted child, by the Division of Child Protection and Permanency. Therefore, a regulatory flexibility analysis is not necessary.

Adoption subsidy is available for a child with special needs under the care of New Jersey private agencies certified to practice adoption pursuant to State adoption law, N.J.S.A. 9:3-37 et seq. In order to be certified, these agencies must meet the requirements for certification as contained in N.J.A.C. 3A:51. No additional compliance requirements are imposed on these agencies through the adoption subsidy program.

Housing Affordability Impact Analysis

The Department does not believe the rules proposed for readoption with amendments will have any 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 the Division's adoption subsidy program.

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 because the rules pertain to the Division's adoption subsidy program.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3A:23.

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

SUBCHAPTER 1. ADOPTION SUBSIDY

3A:23-1.2 Determining that a child is a child with special needs

(a) A child is a child with special needs, subject to the limitations in (b) and (c) below, if the CP&P Director or designee determines that the adoptive placement of that child is significantly burdened or prevented as a result of:

1. (No change.)

2. The child's [having] **living with** any physical [handicap, by reason of physical defect or deformity] **disability or impairment**, whether congenital or acquired by accident, injury, or disease, which makes, or may be expected to make, a child totally or partially incapacitated for education or for remunerative occupation;

3. The child's [having] **living with** any substantial [disfigurement] **impairment**, such as the loss or deformation of facial features, torso, or extremities;

4.-10. (No change.)

(b)-(c) (No change.)

3A:23-1.3 Payments for the care and maintenance of a child with special needs (adoption subsidy)

(a) (No change.)

(b) The Department shall determine and approve the qualifications for subsidy payments prior to the completion of an adoption proceeding. In order to qualify for subsidy, a child must meet at least one criterion for a child with special needs listed in N.J.A.C. 3A:23-1.2(a). The failure of the Department to complete its determination and approval of qualification prior to the finalization of adoption shall not prevent qualification for adoption subsidy, if application for such subsidy was made in a timely manner. [Eligibility for subsidy shall be subject to an annual review and redetermination] **The Department shall issue an annual notice to each adoptive parent receiving adoption subsidy for an adopted child, affirming the adoptive parent's legal responsibility and that there has been no change in requirements**, as described in N.J.A.C. 3A:23-1.4(a).

1. (No change.)

(c)-(g) (No change.)

3A:23-1.4 Duration and amount of adoption subsidy

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

(e) The amount of monthly payment for care and maintenance will be 100 percent of the applicable [foster] **resource** care board rate.

MILITARY AND VETERANS' AFFAIRS

(a)

OFFICE OF THE ADJUTANT GENERAL

New Jersey Distinguished Service Medal

Proposed Amendments: N.J.A.C. 5A:3-2.1 and 2.3

Authorized By: Brigadier General Jemal J. Beale, The Adjutant General, Commissioner, Department of Military and Veterans' Affairs.

Authority: N.J.S.A. 38A:3-6(o) and 38A:15-2 and 3; and P.L. 2017, c. 376.

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

Proposal Number: PRN 2019-016.

Submit written comments by March 23, 2019, to:

Mr. Mark Preston, Chief
Administrative Services Bureau, IASD
New Jersey Department of Military and Veterans' Affairs
PO Box 340
Trenton, NJ 08625-0340
Mark.preston@dmava.nj.gov

The agency proposal follows:

Summary

The Department of Military and Veterans' Affairs (Department) proposes amendments to N.J.A.C. 5A:3, New Jersey Distinguished Service Medal, to clarify and update the criteria and procedures for the award and issuance of the New Jersey Distinguished Service Medal due to statutory changes pursuant to P.L. 2017, c. 376.

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

N.J.A.C. 5A:3-2.1 is proposed for amendment to coincide and reflect recent changes to N.J.S.A. 38A:15-2 (pursuant to P.L. 2017, c. 376), which established the minimum criteria necessary for the award and issuance of the New Jersey Distinguished Medal. Proposed amendments to N.J.A.C. 5A:3-2.1(a) clarify that the award of the New Jersey