

HEALTH

PUBLIC HEALTH SERVICES BRANCH

DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL, AND OCCUPATIONAL HEALTH

VACCINE-PREVENTABLE DISEASE PROGRAM

Hepatitis Inoculation Fund

Proposed Readoption with Amendments: N.J.A.C. 8:57B

Authorized By: Shereef Elnahal, M.D., M.B.A., Commissioner, Department of Health, in consultation with the Public Health Council.

Authority: N.J.S.A. 26:4-100.13.

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

Proposal Number: PRN 2018-063.

Submit electronic comments to <http://www.nj.gov/health/legal/ecomments.shtml>, or written comments to the address below, by September 14, 2018, to:

Joy L. Lindo, Director

Office of Legal and Regulatory Compliance

New Jersey Department of Health

PO Box 360

Trenton, NJ 08625-0360

The agency proposal follows:

Summary

P.L. 1993, c. 227 (the Act), codified in pertinent part at N.J.S.A. 26:4-100.13, establishes the "Hepatitis Inoculation Fund" (Fund), a fund for the payment of the costs

of hepatitis B inoculations for certain health and safety workers. The Fund is a separate, nonlapsing, revolving account, the source of which is a percentage of proceeds collected from property forfeiture and cash seizures pursuant to N.J.S.A. 2C:64-6. N.J.S.A. 26:4-100.13 directs the Department of Health (Department) to promulgate rules directing the operation of the Fund. N.J.A.C. 8:57B, Hepatitis Inoculation Fund, implements that mandate by establishing processes by which the Department administers the Fund to assist municipalities with expenses incurred in providing hepatitis B inoculations to certain emergency medical technicians, firefighters, and police officers.

Following is a summary of the regulatory history of the chapter.

The Department originally adopted N.J.A.C. 8:57B in 1995. See 27 N.J.R. 28(a), 1615(b). In early 2000, the Department proposed to readopt the chapter with technical amendments. See 32 N.J.R. 425(a). Pursuant to Executive Order No. 66 (1978), N.J.A.C. 8:57B expired on April 17, 2000. The Department adopted the expired rules as new rules later that year. See 32 N.J.R. 2896(a).

Reorganization Plan No. 003-2005 (Codey 2005), recast the role of the Public Health Council as being of a consultative and advisory nature in relation to the powers of the Commissioner of Health. See 37 N.J.R. 2735(a).

The Department proposed to readopt the chapter without change in 2005, thereby extending the chapter expiration date to February 3, 2006, pursuant to N.J.S.A. 52:14B-5.1. 37 N.J.R. 3172(a). The Department readopted the chapter in early 2006, thereby establishing January 31, 2011, as the new chapter expiration date. See 38 N.J.R. 1319(a). In accordance with N.J.S.A. 52:14B-5.1.b, Chapter 57B, Hepatitis

Inoculation Fund, the expiration date of the chapter was extended two years to July 30, 2013. See 43 N.J.R. 1203(a). Chapter 57B, Hepatitis Inoculation Fund, was readopted effective July 14, 2011. See 43 N.J.R. 338(a); 2179(a). In accordance with N.J.S.A. 52:14B-5.1.b, Chapter 57B, Hepatitis Inoculation Fund, was scheduled to expire on July 14, 2018. As the Department submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration date is extended 180 days to January 10, 2019, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Department is proposing to readopt the rules with the amendments discussed below.

The Department has reviewed N.J.A.C. 8:57B and determined that the chapter remains necessary, adequate, reasonable, efficient, understandable, and responsive to the purposes for which the Department originally promulgated it. Therefore, the Department proposes to readopt the chapter. The Department also proposes technical amendments throughout the chapter to reflect changes in nomenclature, to correct grammar, and to add contact information for the division within the Department to which municipalities are to submit applications for reimbursement.

Following is a summary of the chapter and the proposed amendments.

Subchapter 1 addresses the Fund provision.

N.J.A.C. 8:57B-1.1 would continue to establish the purpose and scope of the chapter. The Department proposes to amend this section by deleting the word “exclusively” because, in addition to reimbursing municipalities for expenses incurred in the provision of hepatitis B inoculations to first responders, N.J.S.A. 26:4-100.13 authorizes the Department to use funds for related administrative expenses.

N.J.A.C. 8:57B-1.2 would continue to establish definitions of words and terms used throughout the chapter. The Department proposes to amend this section by updating the name of the Department from the “Department of Health and Senior Services” to the “Department of Health,” where referenced in this section and throughout the chapter. In addition, the Department proposes to amend the definition of “Act” to delete the reference to its public law citation and reference instead its codified location in the New Jersey Statutes Annotated. The Department proposes to replace the definition of “Hepatitis Inoculation Fund” by deleting language quoted from the Act and replacing it with language citing directly to the Act in the interest of brevity. The Department proposes to amend the definition of “volunteer” in order to improve the grammar and readability of this definition.

N.J.A.C. 8:57B-1.3 would continue to establish general requirements, which include Fund allocation priorities in accordance with an eligibility schedule for applicant municipalities.

N.J.A.C. 8:57B-1.4 would continue to establish the application process by which municipalities apply for reimbursement from the Fund. The Department proposes to make grammatical changes to N.J.A.C. 8:57B-1.4(d)5 and (e) to improve the readability of these provisions.

N.J.A.C. 8:57B-1.5 would continue to establish the funding and allocation method by which the Department allocates monies from the Fund to applicant municipalities.

N.J.A.C. 8:57B-1.6 would continue to establish the lottery process by which the Department ranks municipalities to receive reimbursement from the Fund. The Department proposes to amend N.J.A.C. 8:57B-1.6(b) by changing the word “shall” to

“may” and adding language that would require the Department to conduct a lottery only in the event that funds are insufficient to reimburse all eligible municipalities. The Department proposes these changes because in recent years there have been sufficient monies in the Fund to reimburse all eligible municipalities, making it unnecessary for the Department to conduct a lottery. The Department proposes to amend N.J.A.C. 8:57B-1.6(b)1 by adding a cross-reference to N.J.A.C. 8:57B-1.3(c) to specify the method that the Department will use to determine when a municipality is eligible. Similarly, the Department proposes to amend N.J.A.C. 8:57B-1.6(b)2 by adding a cross-reference to N.J.A.C. 8:57B-1.3(c) to state where the eligibility schedule may be found in the chapter. The Department proposes to amend N.J.A.C. 8:57B-1.6(c) to establish that notice of lottery results may also be sent to municipalities via electronic means, such as facsimile and e-mail.

N.J.A.C. 8:57B-1.7 would continue to establish that municipalities are to use monies from the Fund for the purposes specified in the Act. The Department proposes to amend N.J.A.C. 8:57B-1.7 to update the spelling of the term “monies” and to delete the word “exclusively” because it is redundant given that the rule already states that the monies in the Fund must be used for the purposes specified in the Act.

N.J.A.C. 8:57B-1.8 would continue to establish the State's right to audit records referenced in Subchapter 1.

N.J.A.C. 8:57B-1.9 would continue to establish the responsibilities of the Department with respect to this chapter including, but not limited to, reimbursement of municipalities and day-to-day administration of the Fund. The Department proposes to amend N.J.A.C. 8:57B-1.9(a)3 by adding a cross-reference to N.J.A.C. 8:57B-1.6(b)

because the duty of the Department to determine municipal rankings only arises in the event a lottery is required pursuant to N.J.A.C. 8:57B-1.6(b).

As the Department has provided a 60-day comment period for 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 Fund exists to reimburse municipalities for their eligible expenditures to vaccinate certain health and safety workers for hepatitis B. There are approximately 37,000 police officers, 7,000 career firefighters, 31,000 volunteer firefighters, and 28,000 emergency medical services personnel in New Jersey. Accordingly, it is possible that more than 100,000 individuals could receive municipally funded hepatitis B vaccinations. Many of these individuals already received hepatitis B vaccines since the implementation of N.J.A.C. 8:57B in 1995. However, as municipalities hire, and/or accept volunteer services from new health and safety workers, the fund remains available to reimburse municipalities for eligible vaccination costs. The Department anticipates that the rules proposed for readoption with amendments would continue to have a positive social impact by increasing the number of first responders who receive hepatitis B vaccinations.

Economic Impact

The Fund is the result of a collaborative effort between the Department of Health, the Office of the Attorney General, and municipal governments. Pursuant to N.J.S.A. 2C:64-6, the Fund consists of deposits of a percentage of proceeds the Attorney General collects from property forfeiture and cash seizures. In accordance with

N.J.S.A. 2C:64-6, the Office of the Attorney General deposited 10 percent of these proceeds into the Fund during the first two years after the effective date of the law, August 6, 1993, and thereafter deposited, and will continue to deposit, five percent of these proceeds into the Fund. Since 1995, the Department has distributed approximately \$4 million to over 400 municipalities from the Fund.

Federal Standards Statement

There are no Federal standards applicable to the rules proposed for readoption with amendments. Therefore, no Federal standards analysis is required.

Jobs Impact

The rules proposed for readoption with amendments have not resulted, and, upon the adoption of the proposed amendments, would not result, in a generation or loss of jobs in the State.

Agriculture Industry Impact

The rules proposed for readoption with amendments have not had, and, upon the adoption of the proposed amendments, would not have, an impact on the agriculture industry of the State.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments have imposed, and, upon the adoption of the proposed amendments, would continue to impose requirements on the Department and on municipal governments applying for reimbursement from the Fund, neither of which is a small business within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments have had, and, upon the adoption of the proposed amendments would continue to have, an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules proposed for readoption with amendments would evoke a change in the average costs associated with housing because the rules proposed for readoption with amendments would continue to establish standards by which municipalities can apply for reimbursement for expenditures they make to vaccinate certain public health and safety workers for hepatitis B and have no bearing on housing costs.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments have had and, upon the adoption of the proposed amendments would continue to have, an insignificant 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 proposed for readoption and the proposed amendments would continue to establish standards by which municipalities can apply for reimbursement for expenditures they make to vaccinate certain public health and safety workers for hepatitis B and have no bearing on housing production.

Racial and Ethnic Community Criminal 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. 8:57B.

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

SUBCHAPTER 1. FUND PROVISION

8:57B-1.1 Purpose and scope

The purpose of this subchapter is to establish a uniform process for allocating the Fund's resources among municipalities in accordance with the priorities set forth in the Act. The Fund shall be used [exclusively] to reimburse municipalities for expenses incurred in the provision of hepatitis B inoculations of emergency medical technicians, firefighters, and police officers. The following rules are established to implement the Hepatitis Inoculation Fund Act, N.J.S.A. 26:4-100.13 et seq. [(P.L. 1993, c. 227)], an [Act] **act** providing for the payment of the cost of hepatitis inoculations for certain health and safety workers.

8:57B-1.2 Definitions

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

"Act" means [P.L. 1993, c. 227] **N.J.S.A. 26:4-100.13 et seq.**, which establishes the Hepatitis Inoculation Fund.

"Commissioner" means the Commissioner of Health [and Senior Services].

...

"Department" means the New Jersey Department of Health [and Senior Services].

"Division" means the Division of Epidemiology, Environmental and Occupational Health, for which the mailing address is Division of Epidemiology, Environmental and Occupational Health, New Jersey Department of Health [and Senior Services], PO Box 369, Trenton, NJ 08625-0369.

...

["Hepatitis Inoculation Fund" or "Fund" means a separate, nonlapsing, revolving account used to reimburse municipalities for expenses incurred in the provision of hepatitis B inoculations to certain emergency services personnel. The Fund shall be administered by the Division of Epidemiology, Environmental, and Occupational Health. The source of this Fund is the statutorily defined percentage of proceeds collected from property forfeiture and cash seizures pursuant to N.J.S.A. 2C:64-6.]

"Hepatitis Inoculation Fund" or "Fund" means the fund established and administered in accordance with N.J.S.A. 26:4-100.13 et seq.

...

"Volunteer" means a person who [gives] **provides** services without any express or implied promise of remuneration.

8:57B-1.4 Application process by municipalities for reimbursement

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

(d) Each application for reimbursable costs shall be in the form of a letter to the Division and shall include the following information:

1.–4. (No change.)

5. Actual reimbursable costs incurred for inoculations of each of the individuals specified in (d)4 above, categorized according to **the** total amount incurred for the hepatitis B vaccine and the cost of fees of professional medical services for administration of the vaccine; and

6. (No change.)

(e) The municipality shall maintain all records [which] **that** were relied upon in [making] **submitting** applications for reimbursement for five years after receiving reimbursement from the Division.

8:57B-1.6 Lottery

(a) (No change.)

(b) A lottery [shall] **may** be held by the Division to determine the order in which eligible applicant municipalities shall receive distribution from the Fund, **if funds are insufficient during the current cycle to fully reimburse all eligible municipalities.**

1. Within 60 days of the close of an application period, all municipalities [which] **that** have applied for reimbursement pursuant to N.J.A.C. 8:57B-1.4, and are deemed eligible **pursuant to N.J.A.C. 8:57B-1.3(c)**, shall be included in the lottery.

2. Applications from all eligible municipalities shall be sorted into the tiers specified in the eligibility schedule **found at N.J.A.C. 8:57B-1.3(c).**

3.–8. (No change.)

9. The lottery shall be witnessed by representatives of [the] health and safety workers [who are affected by the Act and this subchapter, that is], **including at least one** EMT[s], firefighter[s], and police officer[s].

(c) The Division shall disclose the lottery outcome, notifying applicant municipalities of their lottery standings by mail **or via electronic means, such as facsimile or e-mail**, within one month of the conclusion of the lottery.

(d)–(e) (No change.)

8:57B-1.7 Use of hepatitis inoculation funds by municipalities

[Moneys] **Monies** from the Fund [which] **that** are distributed to the municipalities shall be used [exclusively] for the purposes specified in the Act and shall not supplant budgeted funding or any other available funding currently in existence.

8:57B-1.9 Division responsibilities

(a) The Division shall:

1.–2. (No change.)

3. Conduct a lottery to determine municipal ranking, **if required by N.J.A.C.**

8:57B-1.6(b);

4.–5. (No change.)

(b) (No change.)