

## PUBLIC NOTICE

### HEALTH

#### HEALTH SYSTEMS BRANCH

#### Notice of Action on Petition for Rulemaking

#### Thermal Imaging

Petitioner: Caleb L. McGillvary, Trenton State Prison, Trenton, NJ.

**Take notice** that on August 12, 2024, the Department of Health (Department) received a petition for rulemaking from Caleb L. McGillvary, Trenton State Prison, Trenton, New Jersey. The Department filed a notice of receipt of the petition on September 20, 2024, which appears in the October 7, 2024, issue of the New Jersey Register at 56 N.J.R. 2010(a).

**Take further notice** that the Commissioner of the Department, having duly considered the petition pursuant to law, has determined to deny the petition, for the reasons stated below.

The petition requests the Department to promulgate a rule that would require “applicants for positions involving work with children [to] undergo thermal imaging interviews as part of the pre-employment screening process” and require a person seeking a credential to undergo the personally intrusive measures of “thermal imaging” to “assess the applicant's sexual arousal response to videos of children engaged in innocuous activities,” and, thereafter, require persons demonstrating a response to “take a polygraph examination” and “[u]ndergo therapy.” Initially, the Department notes that it does not employ “applicants for positions involving work with children,” and, thus,

does not engage in any “pre-employment screening process” during which to conduct a “thermal imaging interview.”

To the extent that the petition is suggesting that the Department promulgate a rule requiring it to conduct a “thermal imaging interview” of each person applying to the Department for a credential that might result in the person obtaining employment with an entity other than the Department in a position “involving work with children,” the petition fails to identify a specific problem or reason for the requested rulemaking and does not identify an inadequacy of the existing credentialing processes that the Department administers pursuant to its specific statutory authority. For example, the Department conducts a statutorily required criminal history record check as a condition of issuing a credential to a person employed as a certified nurse aide or personal care assistant. Furthermore, imposing the suggested measures as a condition of a person’s ability to obtain a credential from the Department would implicate individual privacy and other civil rights and require specific statutory direction and authorization. The requested rulemaking would exceed the Department’s existing statutory authority, which specifically identifies the procedure to which the Department must adhere in investigating an applicant’s background as a precondition to credential issuance.

N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-4.1(b) require a petition for rulemaking to state clearly and concisely the substance or nature of the rulemaking that is requested, the reasons for the request, and the petitioner’s interest in the request, and references to the authority of the agency to take the requested action. The Department notes that, other than stating that the requested rulemaking would be for the “protection of children”

and “to safeguard the health and safety of children,” as described above, the petition does not identify: (1) a specific problem or reason for the requested rulemaking; (2) the petitioner’s interest in the requested rulemaking; or (3) the Department’s statutory rulemaking authority to promulgate the requested rulemaking.

For the foregoing reasons, the petition is denied.

**Take further notice** that on September 9, 2024, the petitioner submitted an email to the Department requesting the Department convene “a public hearing under N.J.A.C. 1:30-1 et seq.,” regarding the petition. The Department notes that this request for a hearing does not conform with the process set forth at N.J.A.C. 1:30-4.3. As the Department has determined to deny the petition for the reasons stated above, the Department likewise denies the petitioner’s request for a public hearing.

In accordance with N.J.A.C. 1:30-4.2, the Department shall mail this notice of action to the petitioner.