

CHAPTER 51A
 SCREENING OF CHILDREN FOR [ELEVATED] BLOOD LEAD
 [LEVELS] AT OR ABOVE THE BLOOD LEAD REFERENCE
 VALUE

SUBCHAPTER 1. GENERAL PROVISIONS

8:51A-1.3 Definitions

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

“Anticipatory guidance” means the provision of information regarding the major causes of [elevated] blood lead [levels] **at or above the blood lead reference value** and the means of preventing lead exposure to parents or guardians of children less than 72 months of age.

...
 “**Blood lead reference value**” means a blood lead test result, from either a venous or capillary sample, at or above 3.5 micrograms per deciliter (µg/dL) of whole blood.

...
 “Confirmed [elevated] blood lead reference value” means a blood lead test result on a venous blood sample [equal to or greater than five micrograms per deciliter] **at or above 3.5** [(µg/dL)] of whole blood.

“Currently accepted medical guidelines” means that version of guidelines for the medical treatment of children with [elevated] blood lead [levels] **at or above the blood lead reference value** most recent to the time of evaluation, treatment, and follow-up, published by a public health agency other than the Department, or recognized medical professional organization or agency, including the United States Centers for Disease Control and Prevention, the New Jersey Physicians Lead Advisory Committee, and the American Academy of Pediatrics.

...
 [“Elevated blood lead” means a blood lead test result, from either a venous or capillary sample, equal to or greater than five micrograms per deciliter (µg/dL) of whole blood.]

“Environmental follow-up” means actions taken by a local health department to identify and remediate lead hazards in the environment of a child with [elevated] blood lead **at or above the blood lead reference value** in accordance with Chapter XIII of the New Jersey State Sanitary Code, N.J.A.C. 8:51, as amended and supplemented.

SUBCHAPTER 2. SCREENING

8:51A-2.1 Periodic Environmental Assessment and anticipatory guidance

(a) Every physician, registered professional nurse, as appropriate, or health care facility that provides health care services to a child who is at least six months of age, but less than 72 months of age, shall:

1. Inquire if the child has been appropriately assessed and screened for [elevated] blood lead [levels] **at or above the blood lead reference value** in accordance with this chapter;

2. (No change.)

3. Provide the parent or guardian of each child with anticipatory guidance on preventing [elevated] blood lead [levels] **at or above the blood lead reference value**.

8:51A-2.2 Lead screening schedule

(a) Every physician, registered professional nurse, as appropriate, or health care facility, unless exempt pursuant to N.J.A.C. 8:51A-2.3, shall perform lead screening on each patient who is at least six months [and] **but less than 72 months of age** according to the following schedule:

1.-2. (No change.)

3. Each child older than 26 months of age but less than 72 months of age shall be screened if the child has never previously been screened for [elevated] blood lead [levels] **at or above the blood lead reference value**.

SUBCHAPTER 3. SPECIMEN COLLECTION AND LABORATORY TESTING

8:51A-3.1 Specimen collection

(a) Screening for [elevated] blood lead [levels] **at or above the blood lead reference value** shall be by blood lead test.

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

SUBCHAPTER 4. FOLLOW-UP OF LEAD SCREENING RESULTS

8:51A-4.1 Reporting of lead screening results

(a) Each physician, registered professional nurse, as appropriate, or health care facility that screens a child for [elevated] blood lead [levels] **at or above the blood lead reference value** shall provide the parent or legal guardian with the results of the blood lead test and an explanation of the significance of the results.

(b) For each child who has a blood lead test, on a venous blood sample, [greater than or equal to five micrograms per deciliter] **at or above the blood lead reference value**, the physician, registered professional nurse, as appropriate, or health care facility shall notify, in writing, the child’s parent or guardian of the test results and provide the parent or guardian with an explanation in plain language of the significance of the results.

8:51A-4.2 Medical follow-up of lead screening results

(a) Each physician, registered professional nurse, as appropriate, or health care facility that screens a child for [elevated] blood lead [levels] **at or above the blood lead reference value** shall provide or make reasonable efforts to ensure the provision of risk reduction education and nutritional counseling for each child with [a] blood lead [level equal to or greater than 5 µg/dL] **at or above the blood lead reference value** of whole blood.

(b) The physician, registered professional nurse, as appropriate, or health care facility shall obtain, or make reasonable efforts to obtain, a venous confirmatory blood lead test whenever a capillary blood lead screening sample produces a result [greater than or equal to 5 µg/dL] **at or above the blood lead reference value**.

(c) For each child who has [a] blood lead [level of 5 µg/dL or greater] **at or above the blood lead reference value** on a test performed with a venous blood sample, the physician, registered professional nurse, as appropriate, or health care facility shall provide, or make reasonable efforts to ensure, the provision of diagnostic evaluation, medical treatment, and follow-up blood lead testing in accordance with currently accepted medical guidelines.

(d) (No change.)

(e) When a physician, registered professional nurse, as appropriate, or health care facility performs lead screening on a child and receives a result [of 5 µg/dL or greater] **at or above the blood lead reference value** on a test performed with a venous blood sample, the physician, registered professional nurse, as appropriate, or health care facility shall perform lead screening of all siblings or other members of the same household who are at least six months [and] **but less than 72 months of age**, if these children have not been screened previously, or are at high risk for lead exposure, as determined by a PEA performed in accordance with N.J.A.C. 8:51A-2.1.

HIGHER EDUCATION

(a)

SECRETARY OF HIGHER EDUCATION
 Supporting Financial Stability at Public Institutions
 of Higher Education

Proposed New Rules: N.J.A.C. 9A:8

Authorized By: Dr. Brian K. Bridges, Secretary of Higher Education, Office of the Secretary of Higher Education.

Authority: P.L. 2023, c. 115.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.
 Proposal Number: PRN 2024-047.

Please submit written comments on the notice of proposal by July 5, 2024, through mail or email to:

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For comments submitted through email, please name the subject heading "NJAC 9A:8 - proposal."

The agency proposal follows:

Summary

Pursuant to P.L. 2023, c. 115, the Secretary of Higher Education (Secretary) shall adopt rules supporting the financial stability and operational accountability of public institutions of higher education. Effective July 20, 2023, P.L. 2023, c. 115, requires public institutions of higher education to submit annual fiscal monitoring reports, authorizes the Secretary to facilitate comprehensive audits and appoint a State monitor pursuant to certain circumstances, and requires higher education chief financial officers to complete specific training. Accordingly, the following rules are proposed to effectuate the provisions at P.L. 2023, c. 115.

N.J.A.C. 9A:8-1.1 sets forth the purpose and scope of the financial stability and operational accountability rules promulgated by the Secretary, specifically applicable to public institutions of higher education.

N.J.A.C. 9A:8-1.2 defines key terms, as used in the chapter, to implement P.L. 2023, c. 115.

N.J.A.C. 9A:8-1.3 establishes an annual fiscal reporting process and procedure for public institutions of higher education. Using a template provided by the Office of the Secretary of Higher Education (OSHE) and submitting according to an established deadline, public institutions of higher education are to provide the Secretary with information necessary to assess the financial stability of each public institution of higher education. The Secretary may also require the submission of supplemental information in order to further assess the financial stability of an institution.

N.J.A.C. 9A:8-1.4 establishes a comprehensive audit process and procedure for public institutions of higher education. Each public institution of higher education shall undergo a comprehensive audit conducted by the OSHE once every five years. Prior to an institution's scheduled comprehensive audit, the Secretary shall provide the institution with guidelines and a reporting template for the audit, and set a schedule for the submission of records to OSHE by the institution. In addition to the scheduled comprehensive audit occurring once every five years, the Secretary may direct a comprehensive audit of an institution, which may include an onsite review, at the Secretary's discretion, if the Secretary determines that conditions, as specified in the section, may exist within the institution that significantly or negatively impact an institution's fiscal or governance operations. A discretionary comprehensive audit shall be a substitute for a regularly-scheduled comprehensive audit if the discretionary comprehensive audit is conducted within 12 months of the date that the scheduled comprehensive audit is scheduled to begin.

N.J.A.C. 9A:8-2.1 establishes the process by which the Secretary may appoint a State monitor to a public institution of higher education. Appointment is at the discretion of the Secretary; there are no circumstances pursuant to which a State monitor must be appointed. The Secretary may appoint a State monitor pursuant to three circumstances: 1) if the fiscal monitoring report or comprehensive audit mentioned above includes a finding of financial instability of the institution, as determined by the Secretary; 2) the institution receives an adverse or a disclaimer opinion by its independent auditor in the annual audit submitted pursuant to section 6 of P.L. 2009, c. 308 (N.J.S.A. 18A:3B-51); or 3) two or more criteria outlined in this section are satisfied. A State monitor appointed pursuant to this section shall possess a minimum of either five years of

appropriate experience in executive-level management or five years experience and applicable credentials and certifications in financial management.

N.J.A.C. 9A:8-2.2 sets forth the process for the selection of a State monitor. The selection of a State monitor shall be at the discretion of the Secretary. Candidates for the position shall submit a résumé and any other relevant documentation to the Secretary for review, and the Secretary shall make a determination on each candidate's qualifications for the position.

N.J.A.C. 9A:8-2.3 establishes the roles and responsibilities of the State monitor. The State monitor shall oversee the fiscal management and expenditures of funds by the public institution of higher education; oversee the operation and fiscal management of facilities of the public institution of higher education; ensure development and implementation of an acceptable plan to address the circumstances that resulted in the appointment of a State monitor; oversee all staffing, including, within the bounds of the New Jersey Employer-Employee Relations Act, established pursuant to P.L. 1941, c. 100 (N.J.S.A. 34:13A-1 et seq.), and any collective bargaining agreements entered into by the institution, the ability to hire, promote, and terminate employees, as well as the ability to deny proposals by the administration of the institution to hire, promote, or terminate employees; have authority to override certain actions by the president of the institution or a vote by the governing board of the institution; attend all meetings of the governing board of the institution, including closed sessions; meet with the governing board of the institution at least quarterly to provide governing board members with education and training that address the deficiencies and actions leading to the appointment of a State monitor; and make recommendations to the Legislature, including any proposed legislation that the monitor may desire to recommend for enactment, for the systemic improvement of the institution's fiscal condition.

N.J.A.C. 9A:8-2.4 sets forth the reporting requirements for the State monitor. The State monitor, within six months of appointment to the position, shall issue a fiscal accountability plan to the institution's president, governing board, and the Secretary, listing all benchmarks and remedial actions required to be completed by the institution and the necessary capacity and fiscal controls to be restored to the institution as a condition for the cessation of State monitor oversight. Additionally, the State monitor shall issue progress reports to the governing board of the institution and the Secretary on a monthly basis, or on a schedule determined by the Secretary. The Secretary, in consultation with the State monitor, shall develop a transition plan outlining the process for the withdrawal of the State monitor and the return of full institutional control to the governing board of the institution. This plan shall be informed by the State monitor's fiscal accountability plan and the progress reports. The State monitor shall provide oversight of the institution until the Secretary determines that the transition plan has been successfully executed and the necessary capacity and fiscal accountability controls have been restored to institution operations. The transition plan shall include plans on maintaining financial stability following the cessation of the State monitor's appointment.

N.J.A.C. 9A:8-2.5 sets forth the roles and responsibilities of an institution of higher education to which a State monitor has been assigned. The president, chief finance officer, members of the governing board of the institution, faculty, and staff shall cooperate with the State monitor and provide all reasonable and appropriate assistance to the State monitor in the course of their duties and responsibilities.

N.J.A.C. 9A:8-2.6 details the process for the cessation of the services of the State monitor. The State monitor shall certify that the institution is financially stable when the State monitor determines that the following conditions have been satisfied: the conditions that necessitated the appointment of the fiscal monitor are resolved; the fiscal accountability plan submitted by the State monitor to the Secretary has been successfully implemented; and the leadership of the institution, including the governing board, is capable of maintaining the financial stability of the institution following the departure of the State monitor. Following the State monitor's certification, the governing board of the institution may submit an application to the Secretary for removal of the State monitor.

N.J.A.C. 9A:8-3.1 outlines the roles and responsibilities of a chief financial officer at a public institution of higher education. Among the responsibilities listed is the requirement to report the financial condition

of the institution to the Secretary, the governing board, and president of the institution at least twice per fiscal year. Additionally, if at any time, a negative material change in the institution’s financial status occurs, the chief financial officer should immediately notify the president, the chairperson of the governing board of the institution, and the Secretary. Furthermore, a chief financial officer may be held responsible for any and all action taken in breach of the fiduciary duties of the position.

N.J.A.C. 9A:8-3.2 establishes the training requirements for chief financial officers at public institutions of higher education, as mandated pursuant to P.L. 2023, c. 115, and developed by the Office of the Secretary of Higher Education. The training may be provided directly by the Office of the Secretary of Higher Education or by a third party under contract with the Office of the Secretary, including another State agency. The required training shall be offered twice annually or at a frequency that allows impacted individuals to comply with the timeline outlined at P.L. 2023, c. 115. From time to time, the Secretary may convene, either virtually or in-person, all chief financial officers of public institutions of higher education throughout the State to, among other things, review the training requirements applicable at that time, as well as any updates or changes to existing training requirements.

As the Secretary 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

The proposed new rules strengthen New Jersey’s system of public institutions of higher education for their students, faculty, employees, and administration, as well as for all residents of our State by supporting the financial stability and operational accountability of the institutions. In doing so, the rules preserve the independence of New Jersey’s public institutions of higher education while providing a safeguard against the negative consequences of sudden closure for all individuals who entrust our public institutions with their education, careers, and communities.

The proposed new rules offer the State and public greater transparency of the financial status of institutions by requiring them to submit annual fiscal monitoring reports, as well as comprehensive audits on a five-year schedule. The transparency provided by the reports and audits bolsters public accountability of institutions’ presidents, boards of trustees, and chief financial officers to the residents of the State and will serve as an early-warning system and bulwark against threats to the financial stability of institutions.

The proposed new rules improve student and public expectations for short-term and long-term financial stability of institutions by establishing a process for the State to install and remove a State monitor in the event of a finding or indicators of financial instability. Additionally, the rules grant certain powers to the State monitor during their service in bringing an institution back to fiscal health.

The proposed new rules improve public accountability by serving as a foundation for a productive and collaborative relationship between an institution’s administration and boards of trustees by enhancing the training and role of the chief financial officer.

Economic Impact

The proposed new rules require public institutions of higher education to submit fiscal monitoring reports, to undergo comprehensive audits, allow for the appointment of a State monitor by the Secretary to oversee the fiscal and governance operations of a public institution of higher education that meets certain criteria for fiscal instability, and establish chief financial officer responsibilities and training to ensure the long-term fiscal health of the institutions. A direct economic impact to the State and its taxpayers is the avoidance of State budget emergency appropriations to an institution in financial crisis. Upon review of submitted fiscal reports, if it is determined that certain criteria are met, a State monitor may be appointed by the Secretary to oversee the fiscal and governance operations of an institution, which is a substantially less costly alternative than the State making an appropriation for emergency funding to the institution.

A potential indirect economic impact to public institutions of higher education may be the incurring of certain costs associated with complying with the fiscal reporting requirements, in that institutions must allocate resources (employees, materials, equipment, etc.). The costs of such

compliance will vary from institution to institution and within a particular institution but may not always represent additional cost. However, these costs may be offset by the cost savings institutions will realize by not having to provide the regulatory-mandated chief financial officer training, as the training is to be arranged and funded by the Office of the Secretary. In addition, the Secretary will seek to have the chief financial officer training accepted for Continuing Professional Education credits for those chief financial officers who are certified public accountants, which will result in additional cost savings for institutions that provide professional continuing education to employees. Furthermore, a potential indirect economic impact to students is that when an institution that was experiencing a fiscal crisis is able to successfully transition pursuant to the State monitor and become financially stable, the likelihood of aggressive suspension and/or termination of academic programs diminishes. Students at that institution would therefore avoid an outcome where they may be forced to change or terminate their programs of study and would therefore avoid incurring additional tuition and costs that are the result of the student having to change or terminate their program of study.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are not being proposed in order to implement, comply with, or participate in any program established pursuant to Federal law or pursuant to a State law that incorporates or refers to Federal law, standards, or requirements.

Jobs Impact

The Secretary does not anticipate that the proposed new rules will have a direct impact on the creation or loss of jobs.

Agriculture Industry Impact

The Secretary does not anticipate that the proposed new rules would have an impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules do not impose requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules pertain strictly to public and publicly funded colleges and universities in New Jersey, none of which qualify as a small business.

Housing Affordability Impact Analysis

The Secretary does not anticipate that the proposed new rules will have an impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the proposed new rules would evoke a change in the average costs associated with housing, as the rules implement P.L. 2023, c. 115, which requires public institutions of higher education to submit annual fiscal monitoring reports, authorizes the Secretary to facilitate comprehensive audits and appoint a State monitor pursuant to certain circumstances, and requires higher education chief financial officers to complete specific training.

Smart Growth Development Impact Analysis

The Secretary does not anticipate that the proposed new rules would evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan, as the rules implement P.L. 2023, c. 115, which requires public institutions of higher education to submit annual fiscal monitoring reports, authorizes the Secretary to facilitate comprehensive audits and appoint a State monitor pursuant to certain circumstances, and requires higher education chief financial officers to complete specific training.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed new rules will have no impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State. Accordingly, no further analysis is required.

Full text of the proposed new rules follows:

CHAPTER 8
SUPPORTING FINANCIAL STABILITY AT PUBLIC
INSTITUTIONS OF HIGHER EDUCATION

SUBCHAPTER 1. GENERAL STANDARDS

9A:8-1.1 Scope and purpose

(a) This chapter implements P.L. 2023, c. 115, which authorizes the Office of the Secretary of Higher Education to adopt rules to support the financial stability and operational accountability of public institutions of higher education.

(b) This chapter applies to all public institutions of higher education.

9A:8-1.2 Definitions

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

“Business practices” means those accounting and financial practices within a public institution of higher education that are subject to the oversight of the chief financial officer.

“Chief financial officer” means the senior executive responsible for the financial affairs of a public institution of higher education. As used in this chapter, this term includes those individuals who may be serving on an interim basis or otherwise assuming the roles and responsibilities of a chief financial officer without a formal title, appointment, or while also serving in another official capacity within the institution.

“Comprehensive audit” means an audit facilitated by the Secretary to examine a public institution of higher education’s fiscal and governance operations.

“Discretionary comprehensive audit” means a comprehensive audit of an institution’s fiscal and governance operations directed by the Secretary at any time if the Secretary determines that conditions may exist within the institution that significantly or negatively impact the institution’s operations.

“Financial instability” means a finding of instability on the financial condition of a public institution of higher education by the Secretary, upon consideration of a set of comprehensive financial responsibility metrics that may include, but shall not be limited to, the institution’s: Composite Financial Index score; debt to liquidity ratios; audit reports; days cash-on-hand; financial reserves; tuition reliance; debt covenant compliance; credit rating; debt capacity; revenue trends; cost control for expenses; and revenues.

“OSHE” means the New Jersey Office of the Secretary of Higher Education.

“Public institution of higher education” means the State colleges or universities established pursuant to Chapter 64 of Title 18A of the New Jersey Statutes, Rutgers, the State University, New Jersey Institute of Technology, Rowan University, Montclair State University, Kean University, all county colleges, and any other public university or college now or hereafter established or authorized by law.

“Scheduled comprehensive audit” means a comprehensive audit scheduled pursuant to a schedule established by the Secretary every five years.

“Secretary” means the New Jersey Secretary of Higher Education.

“State monitor” means the individual appointed by the Secretary to provide direct oversight of a public institution of higher education’s fiscal and governance operations pursuant to P.L. 2023, c. 115.

9A:8-1.3 Annual fiscal monitoring report procedures

(a) In addition to submitting the annual audit submitted pursuant to N.J.S.A. 18A:3B-51, public institutions of higher education shall submit an annual fiscal monitoring report to OSHE, so that the Secretary may assess the financial stability of each public institution of higher education.

(b) On an annual basis, OSHE shall provide institutions with a template for the fiscal monitoring report and set a submission schedule for the fiscal monitoring report.

(c) Using the template provided by OSHE pursuant to (b) above, each public institution of higher education shall submit an annual fiscal monitoring report to the Secretary, in accordance with the submission schedule established by the Secretary pursuant to this section.

(d) In addition to the annual fiscal monitoring report, the Secretary may require the submission of additional supplemental information from an

institution in order to assess the financial stability of that institution. The Secretary may share the annual fiscal monitoring report and any supplemental information with other State agencies, as may be appropriate.

9A:8-1.4 Comprehensive audit procedures

(a) Pursuant to a schedule established by the Secretary, a public institution of higher education shall undergo a comprehensive audit every five years. The Secretary shall consider the fiscal calendar of each institution when determining the schedule and may adjust the schedule upon a showing of good cause by a subject institution.

(b) Prior to an institution’s scheduled comprehensive audit, the Secretary shall provide the institution with guidelines and a reporting template for the audit and set a schedule for the submission of records to OSHE by the institution. The Secretary shall consider the fiscal calendar of each institution when determining the submission schedule and may adjust the schedule upon a request by a subject institution, which request shall include a justification for the requested adjustment of the schedule.

(c) In addition to the scheduled comprehensive audit made pursuant to (a) above, the Secretary may direct a comprehensive audit of an institution, that may include an onsite review, at the Secretary’s discretion if the Secretary determines that conditions may exist within the institution that significantly or negatively impact an institution’s fiscal or governance operations.

(d) Upon determination by the Secretary that conditions may exist within the institution that significantly or negatively impact an institution’s fiscal or governance operations, OSHE shall notify the institution no later than five business days from the date the determination is made by the Secretary. The Secretary may share this notification with other State agencies, as appropriate. The notification shall be, in writing, and shall include:

1. A summary of the Secretary’s determination; and
2. A date upon which the comprehensive audit is to commence.

(e) A discretionary comprehensive audit made pursuant to (c) above shall be a substitute for a comprehensive audit that was scheduled pursuant to (a) above, if the discretionary comprehensive audit is conducted within 12 months of the date that the scheduled comprehensive audit is scheduled to begin. The discretionary comprehensive audit shall contain all components required by the comprehensive audit detailed at (a) above.

(f) Conditions upon which the Secretary may direct a comprehensive audit pursuant to (c) above include, but are not limited to:

1. An adverse or a disclaimer opinion by the independent auditor in the annual audit made pursuant to N.J.S.A. 18A:3B-51;
2. The institution receives a qualified opinion by the independent auditor in the annual audit submitted pursuant to N.J.S.A. 18A:3B-51 or the fiscal monitoring report submitted pursuant to N.J.A.C. 9A:8-1.3;
3. The institution receives an adverse, disclaimer, or qualified opinion by the independent auditor pursuant to the single audit section for State or Federal awards in the annual audit submitted pursuant to N.J.S.A. 18A:3B-51 or the fiscal monitoring report submitted pursuant to N.J.A.C. 9A:8-1.3;
4. The institution receives any audit findings by the independent auditor identified as material weaknesses in internal controls in the annual audit submitted pursuant to N.J.S.A. 18A:3B-51 or the fiscal monitoring report submitted pursuant to N.J.A.C. 9A:8-1.3;
5. The annual audit submitted pursuant to N.J.S.A. 18A:3B-51 or the fiscal monitoring report submitted pursuant to N.J.A.C. 9A:8-1.3 reveals a deficit balance as calculated for budgetary purposes in the general fund, special revenue fund, or capital projects fund, with the exception of a capital projects fund deficit caused by the issuance of bond anticipation notes;
6. The institution fails to implement a plan from the prior fiscal year which causes any findings from the independent auditor to be repeated;
7. The institution fails to submit the annual audit required pursuant to N.J.S.A. 18A:3B-51 or the fiscal monitoring report required pursuant to N.J.A.C. 9A:8-1.3; and/or
8. The institution fails to comply with the timely training of governing board members as required pursuant to section 17 at P.L. 2009, c. 308 (N.J.S.A. 18A:3B-62), or any other State laws or rules.

SUBCHAPTER 2. STATE MONITOR APPOINTMENT

9A:8-2.1 State monitor appointment

(a) Notwithstanding any other provision of law to the contrary, when an institution meets the criteria set forth at (b) below, the Secretary shall have the authority to appoint a State monitor and additional staff as may be reasonably necessary to assist the State monitor carrying out its duties. The Secretary may notify other State agencies of this appointment, as appropriate.

(b) The Secretary may appoint a State monitor to provide direct oversight of a public institution of higher education's fiscal and governance operations when the institution meets the following criteria:

1. The fiscal monitoring report or comprehensive audit, either regularly scheduled or conducted at the Secretary's discretion, submitted pursuant to sections 2 or 3 at P.L. 2023, c. 115, includes a finding of financial instability of the institution, as determined by the Secretary; or

2. The institution receives an adverse or a disclaimer opinion by its independent auditor in the annual audit submitted pursuant to section 6 at P.L. 2009, c. 308 (N.J.S.A. 18A:3B-51); or

3. The institution meets any two of the following criteria:

i. The institution ends the fiscal year with a deficit balance as calculated for budgetary purposes in the general fund, special revenue fund, or capital projects fund, with the exception of a capital projects fund deficit caused by the issuance of bond anticipation notes;

ii. The institution fails to develop and implement a plan acceptable to the Secretary, or the Secretary's designee, to address a deficit balance in the general fund, special revenue fund, or capital projects fund, with the exception of a capital projects fund deficit caused by the issuance of bond anticipation notes;

iii. The institution receives a qualified opinion by its annual auditor in the annual audit submitted pursuant to section 6 at P.L. 2009, c. 308 (N.J.S.A. 18A:3B-51), or the fiscal monitoring report submitted pursuant to section 2 at P.L. 2023, c. 115;

iv. The institution receives an adverse, disclaimer, or qualified opinion by its independent auditor pursuant to the single audit section for State or Federal awards in the annual audit submitted pursuant to section 6 at P.L. 2009, c. 308 (N.J.S.A. 18A:3B-51), or the fiscal monitoring report submitted pursuant to section 2 at P.L. 2023, c. 115;

v. The institution receives any audit findings by its independent auditor identified as material weaknesses in internal controls in the annual audit submitted pursuant to section 6 at P.L. 2009, c. 308 (N.J.S.A. 18A:3B-51);

vi. The institution fails to implement a plan from the prior fiscal year that causes any findings from the independent auditor to be repeated;

vii. The institution fails to submit the annual audit required pursuant to section 6 at P.L. 2009, c. 308 (N.J.S.A. 18A:3B-51), or the fiscal monitoring report required pursuant to section 2 at P.L. 2023, c. 115; or

viii. The institution fails to comply with the timely training of governing board members as required pursuant to section 17 of P.L. 2009, c. 308 (N.J.S.A. 18A:3B-62), or any other State laws or rules.

(c) A State monitor appointed pursuant to (a) above shall be qualified by training and expertise necessary for the position and shall possess:

1. A minimum of five years of appropriate experience in an executive-level management position; or

2. A minimum of five years of appropriate experience and applicable credentials and certifications relating to financial management.

9A:8-2.2 Process for the selection of a State monitor

(a) Selection of a State monitor shall be at the discretion of the Secretary.

1. Applicants for the State monitor position shall provide a résumé to the Secretary and may provide other documents and work samples that support their candidacy for the position;

2. Applicants for the State monitor position shall be reviewed by OSHE for applicable skills and experience;

3. The Secretary shall determine the start date for the State monitor position; and

4. Compensation for the State monitor shall be commensurate with experience and shall be aligned with industry norms.

9A:8-2.3 Roles and responsibilities of the State monitor

(a) A State monitor appointed pursuant to section 4 at P.L. 2023, c. 115, shall:

1. Oversee the fiscal management and expenditures of funds of the public institution of higher education including, but not limited to, budget reallocations and reductions, approvals of purchase orders, budget transfers, and payment of bills and claims;

2. Oversee the operation and fiscal management of facilities, including developing and implementing recommendations for restructuring the institution offered by the governing board of a public institution of higher education;

3. Ensure development and implementation of an acceptable plan to address the circumstances that resulted in the appointment of a State monitor pursuant to section 4 at P.L. 2023, c. 115, that includes measurable benchmarks and specific activities to address the deficiencies of the institution;

4. Oversee all staffing, including the ability to hire, promote, and terminate employees, as well as the ability to deny proposals by the administration of the institution to hire, promote, or terminate employees, except that all actions of the State monitor shall comply with the New Jersey Employer-Employee Relations Act, established pursuant to P.L. 1941, c. 100 (N.J.S.A. 34:13A-1 et seq.), and any collective bargaining agreements entered into by the institution;

5. Have authority to override any action by the president of the institution or a vote by the governing board of the institution on any of the matters set forth in this section, except that all actions of the State monitor shall comply with the New Jersey Employer-Employee Relations Act, established pursuant to P.L. 1941, c. 100 (N.J.S.A. 34:13A-1 et seq.), and any collective bargaining agreements entered into by the institution;

6. Attend all meetings of the governing board of the institution, including closed sessions;

7. Meet with the governing board of the institution at least quarterly to provide governing board members with education and training that address the deficiencies and actions leading to the appointment of a State monitor pursuant to section 4 at P.L. 2023, c. 115;

8. Make recommendations to the Legislature, including any proposed legislation that the State monitor may desire to recommend for enactment, for the systemic improvement of the institution's fiscal condition, and that may include opportunities for efficiencies through:

i. Mergers, acquisitions, and consolidations;

ii. Program reductions;

iii. Sales of surplus property;

iv. Shared services and joint purchasing;

v. Staff reductions;

vi. Teacher sharing agreements; and

vii. Any other proposals that the State monitor believes would improve the fiscal efficiency of the institution; and

9. Report directly to the Secretary, or the Secretary's designee.

9A:8-2.4 State monitor reporting requirements

(a) The State monitor, within six months of appointment to the position, shall issue a fiscal accountability plan to the institution's president, governing board, and the Secretary listing all benchmarks and remedial actions required to be completed by the institution and the necessary capacity and fiscal controls to be restored to the institution as a condition for the cessation of State monitor oversight. The State monitor may revise or amend the fiscal accountability plan, as may be appropriate. Any revisions or amendments to the fiscal accountability plan shall be shared with the president of the institution, the governing board, and the Secretary within five calendar days of the date of revision or amendment.

(b) The State monitor shall issue progress reports to the president of the institution, its governing board, and the Secretary on a monthly basis, or on a schedule determined by the Secretary. The progress report shall detail the State monitor's evaluation of the institution's progress in meeting the requirements of the fiscal accountability plan and identify the clear and measurable benchmarks used in assessing the institution's fiscal accountability.

9A:8-2.5 Roles and responsibilities of public institution of higher education during State monitor appointment

(a) The president, chief financial officer, members of the governing board of the institution, faculty, and staff shall cooperate with the State monitor and provide all reasonable and appropriate assistance to the State monitor in the course of their duties and responsibilities, including, but not limited to:

1. On-premise, private office space with proximity to the institution's financial operations, offices, and staff. Office space shall be of reasonably sufficient area and comfortably furnished by the institution;
2. On-premise, parking space with proximity to the on-premise office provided for the State monitor;
3. Access to office technology and technology services, including, but not limited to, internet access, printers, telephone, including cellular access, as well as appropriate office supplies;
4. Access to and assistance obtaining, as needed, all documents, records, and financial statements, in print, analog, digital, or other form, that the State monitor deems necessary to perform their duties;
5. The president, chief financial officer, and members of the governing board of the institution shall be available periodically for interviews held during the course of the regular workday;
6. Institutional faculty and staff shall be available periodically for interviews held during the course of the regular work day;
7. Access to and assistance obtaining, as needed, all documents, records, and financial statements held by the public institution of higher education in print, analog, digital, or other form, regarding any vendor, contractor, consultant, and any other relevant third party that the State monitor deems necessary to perform their duties; and
8. The State monitor may request interviews with any vendor, contractor, consultant, and any other relevant third party that the State monitor deems necessary to perform their duties.

(b) The president, chairperson of the governing board of the institution, and chief financial officer may request the opportunity to meet with the Secretary to discuss the financial stability of the institution.

9A:8-2.6 Cessation of the services of the State monitor

(a) The Secretary, in consultation with the State monitor, shall develop a transition plan outlining the process for the withdrawal of the State monitor and the return of full institutional control to the governing board of the institution. This plan shall be informed by the State monitor's fiscal accountability plan, submitted pursuant to N.J.A.C. 9A:8-2.4(a), and the progress reports submitted pursuant to N.J.A.C. 9A:8-2.4(b). The State monitor shall provide oversight of the institution until the Secretary determines that the transition plan has been successfully executed and the necessary capacity and fiscal accountability controls have been restored to institution operations. The transition plan shall include plans on maintaining financial stability following the cessation of the State monitor's appointment.

(b) The State monitor shall certify an institution to be financially stable when the State monitor determines that the following criteria are met:

1. The conditions that necessitated the appointment of the State monitor are resolved;
2. The fiscal accountability plan submitted pursuant to section 6(b)(1) at P.L. 2023, c. 115, has been successfully implemented; and
3. The leadership of the institution, including the governing board, is capable of maintaining the financial stability of the institution following the departure of the State monitor.

(c) After certification by the State monitor has been made pursuant to (b) above, the governing board of the institution may submit an application to the Secretary for removal of the State monitor that includes the following:

1. A report that shows the successful execution of the transition plan and that the necessary capacity and fiscal accountability controls should be restored to the institution;
2. Letters of support from the president, State monitor, chairperson of the governing board of the institution, and chief financial officer; and
3. Statements attesting to the accuracy of the information provided in the application from the president, chairperson of the governing board of the institution, chief financial officer, and State monitor.

(d) Absent an application by the governing board of the institution, the Secretary reserves the right to remove the State monitor at any time.

SUBCHAPTER 3. CHIEF FINANCIAL OFFICERS

9A:8-3.1 Chief financial officer responsibilities and liability

(a) Certain duties and responsibilities of a chief financial officer may require coordination and collaboration with other members of an institution's leadership team and, thus, constitute shared duties and responsibilities not solely reflective of chief financial officer oversight.

(b) The governing board of an institution shall appoint a chief financial officer who shall report to the president in the normal course and the president of the institution shall be responsible for the regular formal evaluation of the chief financial officer.

(c) The responsibilities of the chief financial officer shall include, but are not limited to:

1. Acting as the lead agent on matters pertaining to financial reporting and planning, budget preparation, and management of investments and debt;
2. Ensuring the short-term and long-term fiscal health of the institution;
3. Providing oversight of the business practices of the institution;
4. Aligning the institution's budget with the strategic plan(s); and
5. Attending all scheduled meetings of the institution's governing board and, as requested, meetings of a formal committee of the board, and making oneself available to answer questions at such meetings.

(d) A chief financial officer shall report the financial condition of the institution to the Secretary, the institution's governing board, and the president of the institution at least twice per fiscal year. One of the two reports to the Secretary may be satisfied by the submission of the annual fiscal monitoring report required by section 2 at P.L. 2023, c. 115.

1. The report of the financial condition shall consist of both a narrative portion and, at a minimum, the following information, as applicable:

- i. Composite Financial Index score;
- ii. Debt-to-liquidity ratios;
- iii. Audit reports;
- iv. Days cash-on-hand;
- v. Financial reserves;
- vi. Tuition reliance;
- vii. Debt covenant compliance;
- viii. Credit rating;
- ix. Debt capacity;
- x. Revenue trends; and
- xi. Cost control for expenses.

2. The report shall be submitted electronically to all receiving parties. Chief financial officers may submit hard copies of the reports in addition to the electronic submissions, but not in the place thereof.

(e) If, at any time, a negative material change in the institution's financial status occurs, the chief financial officer should immediately notify the president, the chairperson of the governing board of the institution, and the Secretary.

(f) When ensuring the short-term and long-term fiscal health of the institution as required by section 8(a)(2) at P.L. 2023, c. 115, the obligation of the chief financial officer is to equip the president and the governing board of the institution with accurate financial data necessary to make informed decisions for both the short-term and long-term future of the public institution of higher education.

(g) A chief financial officer may be held responsible for any and all action taken in breach of the fiduciary obligations of the position, regardless of whether such action was taken at the direction of an institution's president, the governing board of the institution, or other employee of the institution.

9A:8-3.2 Chief financial officer training

(a) The training required by the Secretary pursuant to section 9 at P.L. 2023, c. 115, may be provided by OSHE or by a third party pursuant to contract with OSHE, including another State agency.

(b) The required training shall be offered twice annually or at a frequency that allows chief financial officers to comply with the timeline outlined at P.L. 2023, c. 115.

(c) From time to time, the Secretary may convene, either virtually or in-person, all chief financial officers of public institutions of higher

education throughout the State to, among other things, review the training requirements applicable at that time, as well as any updates or changes to existing training requirements.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Vision Care Services Manual

Proposed Readoption with Amendments: N.J.A.C. 10:62

Authorized By: Sarah Adelman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-1 et seq., and 30:4J-8 et seq.

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

Proposal Number: PRN 2024-048.

Submit comments by July 5, 2024, to:

Margaret M. Rose
 Attn: N.J.A.C. 10:62
 Division of Medical Assistance and Health Services
 PO Box 712
 Mail Code #26
 Trenton, NJ 08625-0712
 Fax: (609) 588-7343
 Email: Margaret.Rose@dhs.state.nj.us
 Delivery: 6 Quakerbridge Plaza
 Mercerville, NJ 08619

The agency’s proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1.c, N.J.A.C. 10:62, Vision Care Services Manual, was scheduled to expire on April 18, 2024. As the Department of Human Services (Department) submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration date was extended 180 days to October 15, 2024, pursuant to N.J.S.A. 52:14B-5.1.c(2). The chapter regulates vision care services in the New Jersey Medicaid/NJ FamilyCare fee-for-service programs.

The Department has determined that the Vision Care Services Manual should be readopted because the rules proposed for readoption with amendments remain necessary, reasonable, adequate, efficient, and responsive for the purposes for which they were originally promulgated. The Department, therefore, proposes to readopt the chapter with minor amendments.

The proposed amendments include codifying the requirement that the providers obtain and use a Federally required National Provider Identifier (NPI) and valid taxonomy code for their provider type when submitting claims for reimbursement and updating the list of Healthcare Common Procedure Code System (HCPCS) procedure codes, their descriptions, and maximum fee amounts. Providers were notified of the Federal requirement to obtain an NPI and taxonomy code through the Division of Medical Assistance and Health Services (DMAHS) Newsletter Volume 16, Number 18, in December 2006. The proposed amendments update the rules to memorialize this change. The Centers for Medicare and Medicaid Services (CMS) update the list of procedure codes in the HCPCS annually and the Department is proposing the amendments to be consistent with the most recent updates provided. The codes are also available on the website of the DMAHS fiscal agent, www.njmmis.com, and all providers have free access to that site.

Subchapter 1 sets forth rules related to the provision of professional eye care services, including definitions, provider requirements, covered services, examinations, office visits, hospital services, prior authorization procedures, prescriptions, contributions to care, clinical laboratory services, recordkeeping, and reimbursement.

Subchapter 2 sets forth rules related to optical appliances and related services, including provider requirements, covered services, prior authorization procedures, specific policies for lenses, frames, and prosthetics, fabricating laboratories, recordkeeping, and reimbursement.

Subchapter 3 sets forth the list of procedure codes to be used for reimbursement and the definitions of any qualifiers that are applicable to specified services.

N.J.A.C. 10:62 Appendix sets forth the Fiscal Agent Billing Supplement.

At N.J.A.C. 10:62-1.2, proposed amendments add the definitions for “National Provider Identifier (NPI),” “National Plan and Provider Enumerations System (NPPES),” and “Taxonomy code.”

Proposed new N.J.A.C. 10:62-1.3(b) requires a provider to obtain an NPI from the NPPES, have a valid taxonomy code from the NPPES, and remain in good standing as a Medicaid/NJ FamilyCare provider by completing a provider revalidation application, when requested.

At N.J.A.C. 10:62-1.5(a)8, a proposed amendment corrects the spelling of the term “steropsis” to “stereopsis.”

At N.J.A.C. 10:62-1.5(b)1, proposed amendments split the second sentence of the paragraph into two separate sentences to make the wording easier to understand. The proposed amendment also replaces the term “this additional service” with the actual name of the service, “diagnostic field testing” and other minor amendments simplify the existing language without changing the meaning of the paragraph.

At N.J.A.C. 10:62-1.14(a) and 1.15, a proposed amendment replaces the obsolete HCPCS code 99343 with the code 99344. These codes are related to the provision of service to homebound individuals.

N.J.A.C. 10:62-3, Healthcare Common Procedure Coding System (HCPCS), contains the billing codes and qualifiers related to professional vision care services and vision care appliances. The maximum fee allowances for these services and appliances are based on 70 percent of the Medicare fee for the same or similar services or appliances. The following paragraphs describe proposed adjustments to these amounts.

At N.J.A.C. 10:62-3.2, proposed amendments adjust the maximum fee allowances of the following HCPCS procedure codes:

HCPCS Code	Current maximum fee allowance	Proposed maximum fee allowance
68840	8.00	14.13
92225	25.00	19.78
92226	21.00	16.29
99201	23.50	25.00
99283	23.50	37.74
99284	32.30	64.06
99285	32.30	93.36
99341	23.50	28.71
99342	23.50	40.36

At N.J.A.C. 10:62-3.2, proposed amendments also delete the obsolete code 99343, with a maximum fee allowance of \$51.50, and add the code 99344, with a maximum fee allowance of \$95.36. These codes are related to home or resident services.

At N.J.A.C. 10:62-3.4(a)8 and 9, proposed amendments replace references to the obsolete HCPCS code 99343 with the current code 99344.

At N.J.A.C. 10:62-3.5(c), proposed amendments provide set maximum fee allowances for the two codes listed below, currently these codes are reimbursed based on costs reported by the provider. These codes are related to single vision lenses.

HCPCS Code	Proposed maximum fee allowance
V2106	40.43
V2110	43.67

At N.J.A.C. 10:62-3.5(c), proposed amendments delete the obsolete HCPCS codes V2116 and V2117 and replace them with the current code V2121, with a maximum fee allowance of \$40.00. These codes are related to single vision lenses.