

13. A resource family parent who is unable to prove a legal or blood relationship with a child in resource family care, (as defined at N.J.A.C. 10:90-2.7(a)1), when there are no other eligible children in the household; 14.-16. (No change.)
(b)-(c) (No change.)

SUBCHAPTER 3. FINANCIAL ELIGIBILITY—INCOME, RESOURCES, BENEFITS

10:90-3.19 Exempt income

(a) Exempt income is not considered in determining initial and continued eligibility for assistance or in computing the amount of WFNJ cash assistance payments; however, as part of the determination of eligibility for emergency assistance, the agency shall evaluate all potential contributions of support to the household in accordance with N.J.A.C. 10:90-6.1(c)2. The following sources of income shall be exempt:

1.-12. (No change.)

13. The following funds are considered as exempt income and are also identified as exempt resources designated for special purposes at N.J.A.C. 10:90-3.20(a)14:

i.-vii. (No change.)

viii. Monies received on behalf of a child in resource family care, including extra payments received for special services; and

ix. (No change.)

14.-17. (No change.)

10:90-3.20 Exempt resources

(a) Exempt resources are not subject to any requirement for liquidation and are not considered in determining WFNJ eligibility or in determining the cash assistance benefit. In addition to the exempt income set forth at N.J.A.C. 10:90-3.19, the following resources shall be exempt for each assistance unit:

1.-13. (No change.)

14. Resources designated for special purposes as follow:

i.-vii. (No change.)

viii. Monies received on behalf of a child in resource family care, including extra payments received for special services; and

ix. (No change.)

SUBCHAPTER 6. EMERGENCY ASSISTANCE

10:90-6.1 Availability of emergency assistance

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

(d) The county agency may authorize EA to a family on behalf of a child in order to facilitate the return of a child from resource family care when the appropriate Local Officer Manager (LOM) of the Division of Child Protection and Permanency (CP&P) has approved a specific plan for the return of a child from resource family care and all of the following conditions exist:

1.-4. (No change.)

(e) (No change.)

10:90-6.4 Time limitations

(a) (No change.)

(b) Additional emergency assistance shall be granted beyond the 12-month maximum when, in the judgment of the county or municipal agency, the WFNJ or SSI recipient has taken all reasonable steps to resolve the emergent situation, but the emergency nonetheless continues, or a new emergency occurs, which causes extreme hardship to the family.

1. The following listing is not intended to be exhaustive, nor should it be interpreted as preventing county or municipal agencies from considering other situations not specifically mentioned in the list. Nevertheless, the agency shall confer with DFD if individual and/or family circumstances that are offered as a reason for extending EA represent a departure from the categories provided herein. An extension of emergency assistance based on extreme hardship shall be provided when:

i. (No change.)

ii. There is imminent danger of the immediate breakup of the family unit, with children needing to be placed in resource family care;

iii.-v. (No change.)

2. (No change.)

(c)-(f) (No change.)

SUBCHAPTER 9. NOTICES AND HEARINGS IN WFNJ

10:90-9.1 Notice to applicant/recipient

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

(d) Timely notice may be dispensed with, but adequate notice shall be sent not later than the effective date of the action when:

1.-6. (No change.)

7. An eligible child is removed from the home as a result of a judicial determination, an intervention by the Division of Child Protection and Permanency, or is voluntarily placed outside of the home by his or her legal guardian;

8.-13. (No change.)

SUBCHAPTER 19. KINSHIP CARE SUBSIDY PROGRAM (KCSP)

10:90-19.3 Determining eligibility for the KCSP

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

(d) Sources of countable income reflect WFNJ/TANF income definitions found at N.J.A.C. 10:90-3.9(b) and include, but are not limited to, employment (including self-employment), rental income, Social Security (disability, retirement, or survivor's) benefits, State disability, rental property managed by an agent, worker's compensation, pensions/annuity/401K payments, alimony received, railroad retirement, General Assistance payments, TANF payments (excluding payments for the kinship child), unemployment, interest and dividend income, veterans' benefits, and any child support received.

1. For purposes of determining kinship family eligibility, exempt income, as stipulated at N.J.A.C. 10:90-3.19, includes, but is not limited to, SSI benefits, and payments for resource family care and shall be excluded from the 150 percent FPL income eligibility test in the same manner that such benefits are excluded when determining WFNJ/TANF eligibility. Any member of the family who receives SSI or any child for whom CP&P is making a resource family care payment is not counted as a member of the kinship family for this determination.

(e)-(i) (No change.)

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Notice of Administrative Correction

Home Care Services

Definition of Nurse Delegation

N.J.A.C. 10:60-1.2

Take notice that the Office of Administrative Law (OAL) discovered an error in the text of N.J.A.C. 10:60-1.2. The Department of Human Services (Department), Division of Medical Assistance and Health Services (DMAHS) adopted amendments, new rules, and repeals throughout N.J.A.C. 10:60, effective September 17, 2018 (see 49 N.J.R. 2693(a); 50 N.J.R. 1992(b)). During the comment period, Disability Rights New Jersey (DRNJ) submitted a comment pertaining to the definition of nurse delegation. As part of the comment, DRNJ requested DMAHS to add "pursuant to N.J.A.C. 13:37-6.2" after "selected nursing tasks" to clarify what selected nursing tasks referred to (see Comment 16). DMAHS agreed to the change; however, in making the addition upon adoption, DMAHS inadvertently added the cross-reference as "N.J.A.C. 10:37-6.2."

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

10:60-1.2 Definitions

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

...
 “Nurse delegation” means that the registered professional nurse is responsible for the nature and quality of all nursing care, including the assessment of the nursing needs, the plan of nursing care, the implementation of the plan of nursing care, and the monitoring and evaluation of the plan. The treating registered professional nurse may delegate selected nursing tasks in the implementation of the nursing regimen to licensed practical nurses and ancillary nursing personnel, including certified nursing assistants (CNAs) and certified homemaker-home health aides (CHHA) pursuant to N.J.A.C. [10:37]13:37-6.2.
 ...

LABOR AND WORKFORCE DEVELOPMENT

(a)

OFFICE OF THE COMMISSIONER

Suspension and Revocation of Employer License for Non-Compliance with State Wage, Benefit, and Tax Laws

Adopted New Rules: N.J.A.C. 12:4

Proposed: May 6, 2019, at 51 N.J.R. 533(a).
 Adopted: August 15, 2019, by Robert Asaro-Angelo, Commissioner, Department of Labor and Workforce Development.
 Filed: August 15, 2019, as R.2019 d.098, **without change**.
 Authority: N.J.S.A. 34:1-20.
 Effective Date: September 16, 2019.
 Expiration Date: September 16, 2026.

Summary of Hearing Officer’s Recommendations and Agency’s Response:

A public hearing regarding the proposed new rules was held on May 23, 2019, at the Department of Labor and Workforce Development. David Fish, Executive Director, Legal and Regulatory Services, was available to preside at the public hearing and to receive testimony. Three individuals testified at the public hearing. Written comments were submitted directly to the Office of Legal and Regulatory Services. After reviewing the written comments and the testimony from the public hearing, the hearing officer recommended that the Department proceed with adoption of the new rules without change.

Summary of Public Comments and Agency Responses:

Written comments were submitted by Alida Kass, President and Chief Counsel, New Jersey Civil Justice Institute, Trenton, New Jersey. The following individuals testified at the May 23, 2019 public hearing:

1. Alida Kass, President and Chief Counsel, New Jersey Civil Justice Institute, Trenton, New Jersey.
2. Eric DeGesero, Edge Consulting, Cranford, New Jersey.
3. Patrick Stewart, Public Strategies Impact, Trenton, New Jersey.
4. Bruce Shapiro, Deputy Director of Regulatory Affairs, New Jersey Realtors, Trenton, New Jersey.

The submitted comments and the Department’s responses are summarized below.

1. COMMENT: The commenter objects to the Department’s proposed definition of the phrase, “in connection with” to mean “either related factually or causally, or discovered during the same investigation, a contemporaneous or a near contemporaneous investigation, regardless of whether related factually or causally.” Specifically, the commenter asserts that the Department’s proposed definition of the phrase, “in connection with,” fails to require the sort of “relationship between the failure to record and report, and the failure to pay compensation” that was envisioned by

the Legislature, adding, “[t]he statute ... requires more than a mere coexistence of a ‘violation of requirements to report and record wages’ and a ‘failure to pay wages, benefits and taxes.’” The commenter maintains that the proposed definition would “largely read the phrase ‘in connection with’ out of the statute,” adding, “[b]y its terms, the definition would require no factual relationship; nor would it require that violations be discovered in same investigations, or even a contemporaneous investigation; [r]ather, a ‘near contemporaneous investigation’ would suffice.”

The commenter observes that in “other contexts, New Jersey courts have not been receptive to similar attempts to read a causal connection out of the phrase, [‘in connection with’].” Specifically, the commenter states that when New Jersey’s forfeiture statute provided for the forfeiture of a vehicle used “in connection with” the violation of drug laws, the court observed that, “one does not properly, or at any event ordinarily, speak of two matters as being ‘connected’ when they have nothing in common but a coexistence in point of time.” *Ben Ali v. Towe*, 30 N.J. Super. 19, 24 (App. Div. 1954). According to the commenter, the court in *Ben Ali* concluded that the phrase, “in connection with,” requires a “tie of causality or dependency,” and, therefore, denied the seizure of the car which the defendant had been driving at the time of his arrest for possession of cocaine, as the car, “did not, in the slightest degree, aid [the defendant] in committing the crime; the crime was not in any measure dependent on the car.”

Finally, the commenter asserts that the Department’s proposed definition for the phrase, “in connection with,” is inconsistent with the “legislative history” of N.J.S.A. 34:1A-1.12, citing as evidence, the Statement to the Senate Committee Substitute for S2773, which, according to the commenter, indicates that N.J.S.A. 34:1A-1.12 was enacted to target employers who “gain unfair competitive advantage,” by employing workers “off the books”—“choosing to ignore record-keeping requirements and evade the payment of legally-required wages, benefits and taxes.”

RESPONSE: As reflected in the bill statement quoted by the commenter, the law’s purpose is to target employers who gain unfair competitive advantage by choosing to ignore recordkeeping requirements and evade the payment of legally required wages, benefits, or taxes. The Department’s definition for the phrase “in connection with” seeks to achieve precisely that end; which is to say, it is the Department’s position that when, in the same investigation, contemporaneous investigations, or nearly contemporaneous investigations, it is discovered that for one or more employees an employer has failed to maintain and report all required records and also has “evad[ed] the payment of legally-required wages, benefits and taxes,” the two actions are part of a pattern or practice that has enabled the violator to gain the unfair competitive advantage the law seeks to eliminate. It should not matter whether the triggering violations—one recordkeeping/reporting and the other failure to pay wages, benefits, or taxes — pertain to the same employee, nor should it matter whether those violations are discovered during the same investigation. For, when an employer, as part of an overall scheme to gain an unfair competitive advantage, both enriches himself or herself at the expense of his or her workers by failing to pay legally required wages, benefits, or taxes and seeks to evade detection of his or her scheme by State regulators through failing to keep records and submit reports required under the State’s wage, benefit, and tax laws, the failure to maintain and report records and the failure to pay wages, benefits, or taxes are, in fact, connected. Consequently, such an employer should, under N.J.S.A. 34:1A-1.11 et seq., be subject to heightened scrutiny by the State and where such violations persist, such an employer should be subject to the law’s enhanced penalties. It is the Department’s understanding that this is the law’s purpose. It is the Department’s belief that its proposed definition of the phrase “in connection with,” is consistent with that purpose.

Turning to *Ben Ali*, *supra.*, separate and apart from the myriad factors that distinguish a case involving use of the phrase “in connection with” in the context of a criminal matter involving forfeiture of property, from use of the phrase “in connection with” relative to an administrative/civil penalty for violations of State wage, benefit, and tax laws, the commenter’s summary of the court’s analysis in *Ben Ali* is not entirely accurate. That is, the phrase at issue in *Ben Ali* was not simply “in connection with,” but rather, “used in, for or in connection with;” which