

HUMAN SERVICES

DIVISION OF DEVELOPMENTAL DISABILITIES

Contribution to Care and Maintenance Requirements

Proposed Readoption with Amendments: N.J.A.C. 10:46D

Authorized By: Elizabeth Connolly, Acting Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1-12 et seq., 30:4-60 et seq., and 30:6D-5(b); and P.L. 2005, c. 55.

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

Proposal Number: PRN 2016-081.

Submit written comments by August 5, 2016, electronically to

DDD-CO.LAPO@dhs.state.nj.us, or by regular mail or facsimile to:

Carol Jones

Administrative Practice Officer

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PO Box 726

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1, Chapter 46D, Contribution to Care and Maintenance Requirements, was scheduled to expire on May 5, 2016. As the Department of Human Services (Department) has filed this notice of readoption with the Office of Administrative Law prior to

that date, the expiration date is extended 180 days to November 1, 2016. The Division of Developmental Disabilities (Division) has reviewed this chapter, and has found that with the proposed amendments the rules are reasonable, necessary, and proper for the purpose for which they were originally promulgated. The Department adopted N.J.A.C. 10:46D, Contribution to Care and Maintenance Requirements, as a new chapter effective December 15, 2003. The Department readopted Chapter 46D effective May 5, 2009. N.J.S.A. 30:4-60 requires the Department to determine if a person receiving services from the Division, or his or her legally responsible relatives, possesses sufficient income, assets, resources, or estate to pay for or make payment towards his or her maintenance. The rules are authorized by and implement this statute. The Division proposes to readopt the rules with amendments. The proposed amendments primarily update language and reflect changes in operations since the rules were last readopted in 2009. The Division is currently in the process of implementing system reforms in the delivery of disability services and intends to amend the rules in the future as necessitated by those reforms, with input from its stakeholder community.

Subchapters 1 through 6 are summarized with proposed amendments as follows.

Subchapter 1. General Provisions

N.J.A.C. 10:46D-1.1 sets forth the purpose of the chapter to establish guidelines and criteria for determining the financial ability of persons served, or their legally responsible relatives, to contribute to the cost of care and maintenance when the person receives residential services from the Division.

N.J.A.C. 10:46D-1.2 sets forth the scope of the chapter. The Division proposes to update terminology applied to individuals with intellectual disabilities, and to delete references to challenge grants and the self-determination project, two programs that are no longer in use. The

Division also proposes to clarify language to reflect that individuals residing in settings where contribution to care is not required must apply for and maintain all benefits for which they may be eligible and use those benefits for expenses of daily living.

N.J.A.C. 10:46D-1.3 provides the definitions used in the chapter. The Division proposes to add a definition for “Assistant Commissioner,” the title currently used for the agency head, and to delete “Director.” The Division also proposes to delete the terms “Challenge Grant” and “Self-determination,” as these programs are no longer in use. The Division also proposes to delete the reference to the “State Board of Human Services,” which was abolished by P.L. 2013, c. 253, from the definition of “cost of care and maintenance.” Last, the Division proposes to update the language used to refer to individuals with intellectual disabilities.

Subchapter 2. Financial Criteria

N.J.A.C. 10:46D-2.1 sets forth the general standards applicable to assessing contribution to care and maintenance.

N.J.A.C. 10:46D-2.2 contains guidelines for determining the financial ability to contribute. At subsection (d), the Division proposes to delete the reference to the “State Board of Human Services,” which was abolished by P.L. 2013, c. 253.

Subchapter 3. Treasury Formula – DDD

N.J.A.C. 10:46D-3.1 sets forth the formula to calculate contribution to care and maintenance for individuals over 18 years of age.

N.J.A.C. 10:46D-3.2 sets forth the formula to calculate contribution to care and maintenance for individuals under eighteen 18 years of age. At subsection (a), the Division proposes to replace the reference to the “State Board of Human Services” with “Commissioner.”

The State Board of Human Services was abolished by P.L. 2013, c. 253; its functions, powers, and duties were transferred to the Department.

N.J.A.C. 10:46D-3.3 sets forth the formula to calculate contribution to care and maintenance for married persons over the age of 18 years.

Subchapter 4. Provider Responsibilities

N.J.A.C. 10:46D-4.1 permits the Division to designate the agency providing services to the individual to collect contribution to care and maintenance.

Subchapter 5. Termination

N.J.A.C. 10:46D-5.1 sets forth interim steps and notice requirements before the Division may terminate an individual's services due to nonpayment of contribution to care and maintenance.

Subchapter 6. Appeals Process

N.J.A.C. 10:46D-6.1 sets forth the requirements and process for appeals concerning contribution to care and maintenance. The Division proposes to replace the term "Director" with "Assistant Commissioner" to reflect the currently used title for the agency head, and to add "designee" to clarify that the agency head may use a designee to perform certain functions related to the appeals process. The Division also proposes to amend the address where requests for appeals are to be mailed to reflect the current address.

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

Social Impact

The rules proposed for readoption with amendments will have a positive social impact because they implement statutory law requiring individuals and their legally responsible relatives to contribute to the cost of care and maintenance based upon their financial ability to pay.

Economic Impact

The Division is not proposing any amendments to the manner in which contribution to care and maintenance is calculated or implemented. Therefore, the rules proposed for readoption with amendments will have minimal economic impact on the State budget, which appropriates approximately \$60 million annually to the Division attributable to the contribution to care and maintenance payments. There will be a continuing economic impact on those individuals required to contribute to their care by statute and regulation. This impact is appropriate as the contribution is calculated according to ability to pay and is used to offset the cost of care and maintenance.

Federal Standards Statement

The rules proposed for readoption with amendments are not subject to any Federal requirements or standards. Therefore, a Federal standards analysis is not required.

Jobs Impact

The rules proposed for readoption with amendments will neither generate nor cause a loss of jobs.

Agriculture Industry Impact

The rules proposed for readoption with amendments will not have an impact on agriculture in the State of New Jersey.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments continue to allow provider agencies to collect contributions directly from individuals served, pursuant to terms stipulated in the contract between the Division and the agency. Businesses that choose to do so will be required to keep records regarding those contributions and report collections to the Division. This may apply to small businesses as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. While it is not possible to estimate the number of small businesses that might choose to collect contributions, it should be noted that small businesses that act as representative payee for individuals served and choose to collect contributions will reduce their administrative burdens as they will no longer make monthly payments to the Division. In addition, these agencies are unlikely to have additional recordkeeping requirements as a result of the rules proposed for readoption with amendments because they would be maintaining records as required in their role of representative payee. No capital cost or specialized professional services will be required to comply. No distinction can therefore be made based upon the size of the business. The Division believes these requirements to be reasonable and appropriate.

Housing Affordability Impact Analysis

There is an extreme unlikelihood that the rules proposes for readoption with amendments will have an impact on the affordability of housing in New Jersey or evoke a change in the

average costs associated with housing, because the rules concern contribution to care and maintenance for individuals receiving services from the Division.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments concern the contribution to care and maintenance for individuals served by the Division. Therefore, there is an extreme unlikelihood that the rules will evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan or have an impact on smart growth.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:46D.

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

SUBCHAPTER 1. GENERAL PROVISIONS

10:46D-1.2 Scope

(a)-(b) (No change.)

(c) A determination of the ability to contribute is not required for individuals residing in supported living arrangements[,] **or** in private intermediate care facilities for [the mentally retarded/developmentally disabled (ICF/MR)] **individuals with intellectual disabilities (ICF/IID)** placements not funded by the Division[, or those receiving challenge grants or participating in the self-determination project]. These individuals are required to apply [for] and maintain eligibility for [the Medicaid DDD Community Care Waiver and] all [other] benefits **for**

which they may qualify and [will be required] to directly use those benefits for expenses of daily living.

10:46D-1.3 Definitions

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

...

“Assistant Commissioner” means the Assistant Commissioner of the Division.

...

[“Challenge Grant” refers to a program in which the Division provides funds to an agency, which may be used in combination with other resources available to the individual, which will meet the individual’s needs sufficiently to allow the individual to be removed from the waiting list.]

...

“Cost of care and maintenance” means the daily rate set by the [State Board of Human Services for the residential placement of the individual or the daily rate set by the] Commissioner of the Department of Human Services for community care homes (except respite homes) regulated under N.J.A.C. 10:44B, multiplied by the number of days the individual is, or was, in the placement.

...

[“Director” means the Director of the Division of Developmental Disabilities.]

...

“Medicaid DDD Community Care Waiver” means the Community Care Waiver, which is a Medicaid program that allows the State to waive certain Federal Medicaid eligibility criteria for

individuals who meet eligibility for Division of Developmental Disabilities services and require an [ICR/MR] **ICF/IID** level of care.

...

[“Self-determination” means the Division’s program which allows an individual with developmental disabilities, in connection with his or her legal guardian, if any, family and selected friends to select appropriate services and supports and determine how an individual budget, as well as individual, family and community resources, can be used to develop a living arrangement such as shared living, supported living and other individualized housing options, and allow the individual to be a greater part of their community.]

...

SUBCHAPTER 2. FINANCIAL CRITERIA

10:46D-2.2 Determination of financial ability to pay

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

(d) The individual shall be assessed according to the formula of financial ability to pay at N.J.A.C. 10:46D-3.1 to determine the individual's or legally responsible relative's ability to pay for all or part of his or her cost of care and maintenance as fixed by the [State Board of Human Services or the] Commissioner.

(e)-(j) (No change.)

SUBCHAPTER 3. TREASURY FORMULA - DDD

10:46D-3.2 DDD Formula B-DDD(B) for individuals under age 18

(a) This section shall apply to the individual under age 18 being served, LRR(s) or any other person responsible for the estate of such individual and/or LRR(s). The family maintenance standard for a family of four, for calendar year 2016, is \$31,903, the medical cost standard (for a family of four is \$8,137) and the tuition deduction shall be revised annually, using the Consumer Price Index figures then applicable and the cost for in-State tuition at Rutgers, the State University, (\$11,217 for school year 2015-16). These revisions shall be published annually by the Department as public notices in the New Jersey Register. Additionally, the Department shall publish in the New Jersey Register, the cost of care and maintenance rates as established by the [State Board of Human Services] **Commissioner**.

(b)-(j) (No change.)

SUBCHAPTER 6. APPEALS PROCESS

10:46D-6.1 Appeals

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

(d) Any request for an appeal shall be made within 60 days from the date of the letter notifying the individual, legal guardian, or the LRR of the calculated amount, in accordance with the procedure set forth below:

1. (No change.)

2. Requests for an appeal shall also set forth all issues [which] **that** the individual, legal guardian, or LRR(s) is raising on appeal and shall present all arguments on those issues [which] **that** the individual, legal guardian, or LRR(s) wishes the Division to consider. The individual, legal guardian, or LRR(s) shall explain in detail why they disagree with the calculated amount.

i. (No change.)

ii. The request for an appeal shall be sent to:

Administrative Practice Officer

Division of Developmental Disabilities

PO Box [708]726

Trenton, NJ 08625-[0708]0726

3. (No change.)

(e) (No change.)

(f) Where an appeal request appears to set forth disputed material facts, the [Director] **Assistant Commissioner or designee** shall request an informal meeting to administratively resolve this matter. The [Director] **Assistant Commissioner** shall appoint a designee to meet with the appellant. If the matter cannot be resolved, the [Director] **Assistant Commissioner or designee** shall transmit this matter to the Office of Administrative Law (OAL) for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(g) –(h) (No change.)

(i) Where there are no disputed material facts and an appeal sets forth one or more disputed legal issue(s) and presents arguments on these issues, the [Director] **Assistant Commissioner** may consider those legal issues and arguments in a paper review of the written record. There shall be no discovery, but the individual, legal guardian, or LRR(s) shall have the opportunity to submit written arguments. The [Director] **Assistant Commissioner** shall consider these arguments, if any, the materials presented at the pre-transmittal conference, if any, and all prior

documents regarding the determination of fees. The [Director] **Assistant Commissioner** shall render a written determination that shall constitute the final agency decision in the matter.