

# RULE PROPOSALS

## INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

## HUMAN SERVICES

### (a)

#### DIVISION OF DISABILITY SERVICES

#### Personal Assistance Services Program

#### Proposed Readoption with Amendments: N.J.A.C. 10:140

#### Proposed Repeals: N.J.A.C. 10:140-6.2 and 7.3

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

Authority: N.J.S.A. 30:4G-21.

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

Proposal Number: PRN 2023-089.

Submit written comments by November 4, 2023, to:

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Division of Disability Services  
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The agency proposal follows:

#### Summary

Pursuant to N.J.S.A. 52:14B-5.1.c, N.J.A.C. 10:140, Personal Assistance Services Program, was scheduled to expire on July 26, 2023. As the Department of Human Services (Department) has filed this notice of re-adoption with amendments and repeals prior to that date, the expiration date was extended 180 days to January 22, 2024, pursuant to N.J.S.A. 52:14B-5.1.c(2).

An administrative review of the chapter has been conducted and a determination made that N.J.A.C. 10:140 should be readopted with amendments and repeals because these rules are necessary, reasonable, and adequate for the purposes for which they were originally promulgated. The Personal Assistance Services Program (PASP) provides up to 40 hours per week of personal assistance services to individuals over the age of 18 with permanent physical disabilities. Personal assistance services include routine non-medical tasks that are performed by an assistant to enable individuals with a disability to be employed, prepare for employment, attend an educational or training program, and/or to support active participation in community-based activities (that is, volunteer service). The chapter contains seven subchapters as described below.

The Division of Disability Services (Division) has determined that the comment period for this notice of proposal shall be 60 days; therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this notice is excepted from the rulemaking calendar requirement.

N.J.A.C. 10:140-1 sets forth general provisions relating to PASP services, including definitions and the Personal Assistance Consumer Bill of Rights.

N.J.A.C. 10:140-2 sets forth eligibility standards and provisions for requesting exceptions to those standards.

N.J.A.C. 10:140-3 sets forth provisions for screening and assessment, requirements for personal assistance services and cash management plans, a description of service standards, and processes for service transfers, suspension, and termination. This subchapter also sets forth provisions for appeals and confidentiality requirements.

N.J.A.C. 10:140-4 sets forth standards for individual budgets and establishes maximum fees pertaining to the provision of PASP services.

N.J.A.C. 10:140-5 sets forth the requirements for personal assistance and domestic household employees.

N.J.A.C. 10:140-6 sets forth the training requirements for consumers participating in the PASP.

N.J.A.C. 10:140-7 sets forth information related to the fiscal intermediary service organization, the duties of the county designated agency, and the role of the State Consumer Advisory Council on Personal Assistance Services.

#### Specific Changes

Proposed N.J.A.C. 10:140-1.4, defines the words and terms used in this chapter. The Division is proposing amendments to several definitions for the purpose of clarification of certain terms including the removal of repealed rules to align with the statutory definition of permanent physical disability; or for the purpose of consistency with provisions proposed elsewhere in this chapter.

The definition of “administrative hearing” is proposed for amendment to remove the cross-reference to N.J.A.C. 10:6, which was repealed. The remaining cross-references sufficiently address the administrative hearing process.

The definition of “chronic physical disability” is proposed for deletion. This definition no longer appears in the statutory authority. Section 10 at P.L. 2009, c. 160, was amended to rename “chronic physical disability” to “permanent physical disability.” The term “chronic physical disability” is not used in this chapter. The definition of “permanent physical disability” is already used in this subchapter.

The definition of “county program consultant” is proposed for amendment to change the term to “county program coordinator” to reflect the current terminology for this position.

The definition of “direct services” is proposed for amendment to remove the phrase “the performance of assessment, reassessments and follow-up visits by the qualified assessor and/or” as this describes the process to obtain direct services and can be found elsewhere in the chapter. The remainder of the definition correctly describes direct services.

N.J.A.C. 10:140-1.5 defines the target population and priority for services. The Division proposes to delete subparagraph (b)1ii to remove the October 6, 2016, deadline for certain consumers to meet the definition

of employment. The Division has found that all current consumers have met the requirement and the deadline is no longer applicable. The proposed amendment also corrects the cross-reference at paragraph (d)2. The correct cross-reference is N.J.A.C. 10:140-1.4, not N.J.A.C. 10:140-4.1.

N.J.A.C. 10:140-2.1 sets forth the eligibility standards for PASP. The Division is proposing to amend paragraph (a)1 to remove the age limit of 70 years to comply with the statutory change at N.J.S.A. 30:4G-16. The Division is proposing to amend subparagraph (f)4i to replace the word “consultant” with “coordinator” to reflect the current terminology. N.J.A.C. 10:140-2.1(f)4ii is proposed for deletion.

N.J.A.C. 10:140-2.2 sets forth exceptions to the eligibility standards. The Division is proposing to delete subsection (d), which permits exceptions for individuals over age 70. As the statute has been amended to remove this upper age limit, there is no longer a need for an exception, as reaching age 70 is no longer a bar to eligibility.

N.J.A.C. 10:140-3.1 sets forth the process for screening applicants. The Division is proposing to amend paragraph (b)1 to remove the cross-reference to N.J.A.C. 10:120, as N.J.A.C. 10:120 is reserved. Additionally, the process and right to appeal are set forth elsewhere in this chapter.

N.J.A.C. 10:140-3.2 sets forth the assessment process for PASP. The Division is proposing to remove the phrase “or the person’s spouse” at subsection (c), as N.J.S.A. 30:4G-19 was amended to remove the individual’s spouse from the financial assessment.

N.J.A.C. 10:140-3.3 sets forth the process for generating the personal assistance service plan and the case management plan. The Division is proposing an amendment at subsection (e) to remove the term “calendar year” and replace it with “fiscal year” to reflect the change in the timeline for the cash management plan.

N.J.A.C. 10:140-3.4 sets forth the application disposition and the Division is proposing to remove the phrase “or that consumer’s spouse” at paragraph (b)3 as N.J.S.A. 30:4G-19 was previously amended to remove the spouse from the cost share determination.

N.J.A.C. 10:140-3.8 sets forth the process for transferring a consumer’s case to another county. The Division is proposing to delete paragraph (b)1, which discusses arrangements for an individual with language or communication difficulties to communicate a move to another county by alternative means. The Division has determined that this paragraph is duplicative and the same process is fully addressed at subsection (b).

N.J.A.C. 10:140-3.11 sets forth the process for hearings and appeals. The Division has reviewed this section and has found that subsection (g), which sets forth the contact information for the Appellate Division of the Superior Court of New Jersey should be deleted because this information is published by the court and may be subject to change. The Division also proposes to amend subsection (f) to indicate that an appeal of a final decision may be sought pursuant to the New Jersey Court Rules, rather than listing the specific timeframe for an appeal, which is under the authority of the court.

N.J.A.C. 10:140-4.3 sets forth the process and framework for determining the consumer’s cost share. The word “and” is inserted in the first sentence at subsection (c) for clarity. Additionally, in describing acceptable verifications, paragraph (e)1 uses the term “photostatic,” and it is proposed that this term be removed as it is outdated and unnecessary.

N.J.A.C. 10:140-6.1 sets forth training requirements for PASP consumers. The Division is proposing to amend subsection (a) to remove the term “Cash Model” and replace it with “PASP” as the correct title of the orientation program. Furthermore, the Division proposes to repeal N.J.A.C. 10:140-6.2, which sets forth the penalties for non-compliance with training, and relocate the rule into existing N.J.A.C. 10:140-6.1(c), without change.

The Division proposes to amend N.J.A.C. 10:140-7.1, which sets forth the requirements of the fiscal intermediary, to correct the word “perspective” at subsection (b) to “prospective.”

The Division proposes to amend N.J.A.C. 10:140-7.2, which lists the duties of the county designated agency, to replace the term “consultant” at subsection (a) with “coordinator” to align with the current usage.

The Division proposes to repeal N.J.A.C. 10:140-7.3, as it sets forth and restates N.J.S.A. 30:4G-20, which establishes the State Consumer Advisory Council for Personal Assistance (Council). The statute is the

controlling authority for the Council and restatement in the chapter is duplicative and could cause confusion.

#### **Social Impact**

The Division of Disability Services anticipates that the rules proposed for re adoption with amendments and repeals will provide a positive social impact on the lives of individuals in New Jersey with permanent physical disabilities. As of March 2023, 417 individuals were being served Statewide under the Personal Assistance Services Program.

The Personal Assistance Services Program provides a means by which individuals with permanent physical disabilities can enhance their independence and self-sufficiency through their direction of personal assistance services. Such services enable individuals with disabilities to become employed, prepare for employment, remain employed, pursue an education, or remain independent and allow participation in their community.

The services provided pursuant to the Personal Assistance Services Program enable consumers to be employed or prepare for employment in order to become self-sufficient, and, thus, result in a significant social benefit for people with disabilities. For the general public, the benefit of fuller integration of people with disabilities provides for a more representative society. The full participation, integration, and productivity of those served by this program in all aspects of community life, advances civil liberties to the benefit of society as a whole.

#### **Economic Impact**

The Division of Disability Services believes that the rules proposed for re adoption with amendments and repeals will have no adverse economic impact upon participants in the Personal Assistance Services Program. The full cost of the Personal Assistance Services Program, as established through the enabling legislation, has been wholly supported through a line item in the Division budget every year. For State Fiscal Year 2024, \$11.1 million dollars from general and casino revenues has been appropriated to administer this program. The program serves about 500 participants annually.

The economic impact on the target population of permanently physically disabled individuals is expected to be very positive. Individuals will be able to remain employed or will be able to prepare for employment, thus gaining the skills necessary for future economic self-sufficiency.

#### **Federal Standards Statement**

A Federal standards analysis is not required because the rules proposed for re adoption with amendments and repeals are not subject to any Federal requirements or standards. However, both the rules and program operations are in compliance with the Americans with Disabilities Act of 1990.

#### **Jobs Impact**

The rules proposed for re adoption with amendments and repeals will not impact the jobs currently supported pursuant to the rules proposed for re adoption with amendments and repeals and may continue employment for caregivers assisting individuals who would have lost eligibility at age 70. The removal of the upper age limit will allow those individuals to remain on or obtain PASP benefits and hire caregivers.

#### **Agriculture Industry Impact**

The Division of Disability Services anticipates no impact on the agriculture industry in New Jersey as a result of the rules proposed for re adoption with amendments and repeals.

#### **Regulatory Flexibility Statement**

The providers pursuant to this program historically have been entities of county government. The enabling legislation for the Personal Assistance Services Program allows private not-for-profit organizations that have experience in providing information and services for disabled adults, to be providers pursuant to the program as well. These organizations are serving in the function of the county governments and/or the State and, therefore, are not small businesses, as that term is defined at N.J.S.A. 52:14B-16 et seq., and for the purposes of the rules proposed for re adoption with amendments and repeals, are subject to the same reporting, recordkeeping, and other compliance requirements as the government entities. No capital costs are anticipated to be required as a result of the rules proposed for re adoption with amendments and repeals.

The full cost of the Personal Assistance Services Program, as established through enabling legislation, has been fully supported annually through a line item in the State budget. No professional services are anticipated to be required with the rules proposed for readoption with amendments and repeals.

**Housing Affordability Impact Analysis**

The rules proposed for readoption with amendments and repeals will have an insignificant impact on the affordability of housing in New Jersey. It is unlikely that the rules proposed for readoption with amendments and repeals would evoke a change in the average costs associated with housing because the rules proposed for readoption with amendments and repeals pertain only to the Personal Assistance Services Program, which has no effect on housing.

**Smart Growth Development Impact Analysis**

The rules proposed for readoption with amendments and repeals will have an insignificant impact on smart growth development. It is very unlikely that the rules proposed for readoption with amendments and repeals would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption with amendments and repeals pertain only to the Personal Assistance Services Program, which has no effect on housing.

**Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The rules proposed for readoption with amendments and repeals will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles or adults 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. 10:140.

**Full text** of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10:140-6.2 and 7.3.

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

SUBCHAPTER 1. GENERAL PROVISIONS

10:140-1.4 Definitions

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

“Administrative hearing” means a hearing held by the Office of Administrative Law (OAL) pursuant to N.J.S.A. 52:14B-9 et seq., **and** [N.J.S.A.] 52:14F-1 et seq., **and** N.J.A.C. 1:1-1 [and N.J.A.C. 10:6].

...  
 [“Chronic physical disability” means a severe impairment of a permanent nature which so restricts a person’s ability to perform essential activities of daily living that the person needs assistance to maintain the person’s independence and health.]

...  
 “County program [consultant] **coordinator**” means an individual employed by, or under contract with, the county designated agency who serves as the primary support for consumers and provides individual guidance and periodic monitoring of service activities to ensure the needs are being met [under] **pursuant to** the Program.

...  
 “Direct services” means [the performance of assessments, reassessments and follow-up visits by a qualified assessor and/or] the provision of personal assistance services to consumers.

10:140-1.5 Target population and priority for services  
 (a) (No change.)  
 (b) Prioritization for service delivery shall be determined by the county designated agency in the following order of priority, for consumers who are:

1. Employed in a paid occupation [(in accordance with the definition of “employment” at N.J.A.C. 10:140-1.4)].
  - i. (No change.)

[ii. Existing consumers who claim employment as their Program activity shall meet this requirement by October 6, 2016, in order to remain compliant in the Program.]

- 2.-3. (No change.)
  - (c) (No change.)
  - (d) The following activities shall not be considered as qualifying program activity [under] **pursuant to** the PASP:
    1. (No change.)
    2. Parenting or child rearing activities not covered [by] **at** N.J.A.C. 10:140-[4.1]1.4; and
    3. (No change.)

SUBCHAPTER 2. ELIGIBILITY

10:140-2.1 Eligibility standards

(a) For the purposes of the Personal Assistance Services Program, an eligible applicant or consumer shall meet the following standards, except as noted [in] **at** N.J.A.C. 10:140-2.2:

1. An eligible applicant or consumer shall be [from the age of 18 through the age of 70] **18 years of age or older** and shall have a permanent physical disability;

- 2.-8. (No change.)
- (b)-(e) (No change.)

(f) It is the responsibility of the consumer to maintain Program eligibility in good standing. A consumer shall be determined to be in good standing by doing the following:

- 1.-3. (No change.)

4. Notifying the county designated agency of any change(s) in Program activity as described [under] **at** N.J.A.C. 10:140-1.1 and 1.5(a) and (b), including, but not limited to, acquiring new employment, loss of employment, withdrawal from, or completion of, a post-secondary educational or training program, new enrollment in a post-secondary educational or training program, participation in new volunteer activity, or withdrawal from, or termination of, participation in a volunteer activity. Consumers shall be required to submit documentation to support such change.

i. Consumers must notify their county designated agency Program [consultant] **coordinator** of any significant change in Program activity immediately, but no longer than 15 business days. Notification may be performed verbally, in writing, or electronically (computer message).

[ii. Upon receipt of notification from the consumer, the county designated agency shall inform the Division of Disability Services (DDS) PASP Program Administrator.]

- Recodify existing iii.-v. as **ii-iv**. (No change in text.)
5. (No change.)

10:140-2.2 Exceptions to eligibility standards

- (a)-(c) (No change.)
- [(d) In granting an exception to N.J.A.C. 10:140-2.1(a)1, the following standards shall be applied for consumers who are over age 70:

1. The consumer shall be employed or attending a post-secondary educational or training program, or shall demonstrate active participation as a volunteer or in community service;

2. The consumer shall provide documentation of his or her application and the results of that application, when available, for other similar services for which the consumer may be eligible;

3. The consumer shall be a current recipient of services under the Personal Assistance Services Program.]

- Recodify existing (e)-(f) as **(d)-(e)** (No change in text.)

SUBCHAPTER 3. SCREENING, SERVICES, AND APPEALS

10:140-3.1 Screening

- (a) (No change.)
- (b) The applicant shall be notified, in writing, within five working days after completion of the county screening as to the results of the applicant’s inquiry regarding participation in the Personal Assistance Services Program.

1. If the applicant is determined to be ineligible, the applicant shall be informed, in writing, of this determination and the right to appeal [(see N.J.A.C. 10:120)].

- 2. (No change.)
- (c) (No change.)

10:140-3.2 Assessment

- (a)-(b) (No change.)
- (c) Within 30 days of notification from the applicant of the completion of the application package, a member of the staff of the county designated agency shall perform a financial assessment to determine the ability of the person [or the person’s spouse] to pay for personal assistance services according to the sliding fee scale established pursuant to N.J.A.C. 10:140-4.3.

10:140-3.3 Individual personal assistance services plan and cash management plan

- (a)-(d) (No change.)
- (e) The consumer shall use no more than the monthly cash allowance authorized by the county designated agency [under] **pursuant to** the approved cash management plan [pursuant to] **at** (a) and (b) above. Cash allowance awarded to a consumer that remains unused after the end of the [calendar] **fiscal** year shall not accrue to the future use or benefit of that consumer, except to provide additional or emergency service hours. Requests from program consumers to use unspent funds to purchase additional service hours shall not be subject to appeal.
- (f)-(i) (No change.)

10:140-3.4 Disposition of application

- (a) (No change.)
- (b) If an applicant is determined eligible, in addition to (a) above, the notification shall include the following:
  - 1.-2. (No change.)
  - 3. If applicable, an estimate of the amount of money that the eligible consumer [or that consumer’s spouse] is required to pay toward personal assistance services.
- (c) (No change.)

10:140-3.8 Transfer of services to another county

- (a) (No change.)
- (b) In order to effect a transfer of personal assistance services, the eligible consumer shall notify the county of origin and the destination county of his or her intention to move. Notification shall be, in writing, or, where appropriate, verbally or through alternative communication methods. It is the consumer’s responsibility to provide a recent copy of their current cash management plan.
  - [1. Applicants or consumers who are unable to communicate in English or have a communication handicap may make arrangements with the county designated agency for an alternative means for verifying their notification of a move to another county. All other persons must provide notification of a move in writing to the director of the county designated agency.]

10:140-3.11 Hearings and appeals

- (a)-(e) (No change.)
- (f) If the applicant or eligible consumer objects to the final decision made in accordance with (e) above, [a notice of appeal may be filed by the applicant or eligible consumer with the Appellate Division of the Superior Court of New Jersey. Such appeals shall be made within 45 days of the date of the final decision] **an appeal may be sought pursuant to the New Jersey Court Rules.**
  - [(g) Further information about filing a notice of appeal may be obtained by calling or writing the:
    - Appellate Division of the Superior Court of New Jersey
    - Richard J. Hughes Justice Complex
    - PO Box 006
    - Trenton, New Jersey 08625-0006
    - (609) 292-4822]

SUBCHAPTER 4. INDIVIDUAL BUDGETS AND FEES

- 10:140-4.3 Consumer cost share obligation fees and requirements
- (a)-(b) (No change.)

(c) The Consumer Cost Share Obligation Table (set forth in the table [in] **at** (j) below) indicates income ranges and associated percentages of the total cost of the service to be paid by a consumer whose income falls within those ranges **and** shall be applied to eligible consumers. For the purposes of assessing consumer fees [under] **pursuant to** the Consumer Cost Share Obligation Table set forth [in] **at** (j) below, the county designated agency shall calculate family size and the consumer’s individual annual gross income pursuant to the FPL at 350 percent.

- (d) (No change.)
- (e) Each consumer shall provide verification of annual gross income for determination of applicable cost share obligation fees upon application to the Personal Assistance Services Program and every 12 months thereafter. The determination of the cost share obligation fees shall be made by the county designated agency and redetermined every 12 months at a minimum.
  - 1. Acceptable verification includes, but is not limited to, pay stubs, W-2 forms or [photostatic] copies of the actual 1040 form filed with the Internal Revenue Service, business records, pension statements, and/or correspondence from employers or agencies (for example, Social Security Administration, State employment agencies).
  - 2. (No change.)
  - (f)-(j) (No change.)

SUBCHAPTER 6. CONSUMER INFORMATION AND PERSONAL ASSISTANT TRAINING

10:140-6.1 Training requirements

- (a) Newly eligible consumers [under] **for** the Personal Assistance Services Program shall complete one mandatory training course entitled Orientation to [Cash Model] **PASP** to be offered by the designated training agency, under contract with the Division. Consumers who have been previously trained may attend a refresher course as they deem it to be necessary.
    - 1. (No change.)
    - (b) (No change.)
    - (c) Training as set forth [in] **at** (a) above shall be mandatory and no waivers of the requirement shall be considered. **Consumers who fail to complete the required course shall have their personal assistance services suspended and/or terminated, pursuant to N.J.A.C. 10:140-3.9.**
    - (d)-(h) (No change.)
- 10:140-6.2 (Reserved)**

SUBCHAPTER 7. COMPLIANCE WITH LAWS

10:140-7.1 Requirements of fiscal intermediary service organization

- (a) (No change.)
- (b) At the consumer’s discretion, they may choose to have the fiscal intermediary service organization conduct a background check on a [perspective] **prospective** employee. The cost of the background check shall be reflected on the CMP and be deducted from the consumer’s cash allotment.
- (c) (No change.)

10:140-7.2 Duties of county designated agency

- (a) Under the direction of the designated State agency, the county designated agency serves in the role of a [“consultant?”] **coordinator** providing primary [front line] **front-line** support and guidance to consumers, and shall perform the following duties:
  - 1.-18. (No change.)

**10:140-7.3 (Reserved)**