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RULE PROPOSALS

**LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF VOCATIONAL REHABILITATION SERVICES**

48 N.J.R. 2419(a)

Proposed Readoption: N.J.A.C. 12:45

[Click here to view Interested Persons Statement](#)

Rules of the Division of Vocational Rehabilitation Services

Authorized By: Aaron R. Fichtner, Ph.D, Acting Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 34:1-20, 34:1A-3(e)*, and *34:16-20* et seq.; and *34 CFR 361.1* et seq.

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

Proposal Number: PRN 2016-189.

A **public hearing** on the rules proposed for readoption will be held on the following date at the following location:

Thursday, December 8, 2016
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor and Workforce Development
John Fitch Plaza
3rd Floor Large Conference Room
Trenton, New Jersey 08625

Please call the Office of Legal and Regulatory Services at (609) 292-2789 if you wish to be included on the list of speakers.

Submit written comments by January 20, 2017, to:

David Fish, Executive Director
Office of Legal and Regulatory Services
New Jersey Department of Labor and Workforce Development
PO Box 110--13th Floor, Suite G
Trenton, New Jersey 08625-0110
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E-mail: david.fish@dol.nj.gov.

The agency proposal follows:

Summary

Pursuant to *N.J.S.A. 52:14B-5.1, N.J.A.C. 12:45*, Division of Vocational Rehabilitation Services, was scheduled to expire on October 19, 2016. As the agency submitted this notice of proposal to the Office of Administrative Law (OAL) prior to that date the expiration date is extended 180 days to April 17, 2017, pursuant to *N.J.S.A. 52:14B-5.1.c(2)*. The chapter applies to every individual who is seeking vocational rehabilitation services through the Division of Vocational Rehabilitation Services (Division), within the Department of Labor and Workforce Development (Department). The purpose of the chapter is to set forth the procedures, standards, and criteria used by the Division of Vocational Rehabilitation Services to rehabilitate individuals with disabilities. The Department of Labor and Workforce Development has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated and are, therefore, proposing them for reoption at this time.

A summary of the sections of *N.J.A.C. 12:45* follows:

N.J.A.C. 12:45-1.1 addresses the purpose and scope of the subchapter.

N.J.A.C. 12:45-1.2 contains definitions of the words and terms used throughout the chapter.

N.J.A.C. 12:45-1.3 contains the procedures for the processing of applications and referrals of those persons seeking vocational rehabilitation services.

N.J.A.C. 12:45-1.4 contains the eligibility standards for vocational rehabilitation services.

N.J.A.C. 12:45-1.5 addresses the preliminary assessment requirement for judging an applicant's eligibility to receive vocational rehabilitation services.

N.J.A.C. 12:45-1.6 contains the criteria for making a comprehensive assessment of an applicant's eligibility to receive vocational rehabilitation services.

N.J.A.C. 12:45-1.7 delineates the procedures attendant to the grant or denial of an application for vocational rehabilitation services.

N.J.A.C. 12:45-1.8 sets forth the criteria for an order of selection of Divisional services in the event of a shortage of funds necessary to service all eligible clients.

N.J.A.C. 12:45-1.9 sets forth the manner in which client case files are to be ordered and maintained.

N.J.A.C. 12:45-1.10 addresses the formulation of and procedures relating to a client's individualized plan for employment.

N.J.A.C. 12:45-1.11 sets forth what a client's individualized plan for employment must contain.

N.J.A.C. 12:45-1.12 delineates what constitutes vocational rehabilitation services.

N.J.A.C. 12:45-1.13 contains the criteria used to determine when a client is deemed to be rehabilitated.

N.J.A.C. 12:45-1.14 concerns the participation of clients in the cost of vocational rehabilitation services.

N.J.A.C. 12:45-1.15 governs the protection, use, and release of client information.

N.J.A.C. 12:45-1.16 addresses a client's right to appeal a Divisional decision.

N.J.A.C. 12:45-1.17 continues to be reserved.

N.J.A.C. 12:45-2.1 addresses the purpose and scope of the subchapter.

N.J.A.C. 12:45-2.2 contains the definitions utilized in Subchapter 2.

N.J.A.C. 12:45-2.3 delineates the responsibilities of community rehabilitation programs.

N.J.A.C. 12:45-2.4 concerns the methods for reimbursing allowable expenses by the Division to the client.

[page=2420] *N.J.A.C. 12:45-2.5* sets forth the mode by which the allowable expenses will be disbursed.

N.J.A.C. 12:45-3 is reserved.

Appendix A contains the transportation survey form.

As the Department has provided a 60-day comment period on this notice of proposal, 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 would have a positive social impact on the Division's client base as they would continue to allow individuals with disabilities to become more independent and self-supporting. The rules would benefit individuals with disabilities by enabling them to perform meaningful work in integrated settings and to play a major role in choosing alternative goals, objectives, and services. The rules proposed for readoption would also benefit the public by assisting the Division in its effort to increase the participation of individuals with disabilities in community activities and work.

Economic Impact

The rules proposed for readoption would have a positive economic impact in that they would help Divisional clients obtain a vocation which will provide them with employment and assist them in reaching the goal of independent economic sustainability. The rules continue to emphasize "competitive employment." Those "competitively" employed must receive compensation at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employers for the same or similar work performed by individuals who are not disabled. As a result, the rules promote individuals with disabilities to the status of wage earners and provide a measure of economic sufficiency. The increased productivity, self-sufficiency, and economic independence of individuals with disabilities would also benefit the general public. Most notably, the public would experience a positive economic impact in the form of tax contributions and other revenues that support the economy.

While *N.J.A.C. 12:45-1.14* encourages cost-sharing of Divisional services with a client, if possible, and subsection (i) delineates the parameters of the cost-sharing, which could economically impact an individual client, the ultimate goal of employability and self-sufficiency for a client outweighs any temporary monetary outlay by the client associated with the vocational rehabilitative process. Moreover, while cost-sharing is encouraged, *N.J.A.C. 12:45-1.14(h)2* continues to include exceptions, which under certain circumstances would permit a waiver of the client's obligation to share costs.

Federal Standards Statement

The rules proposed for readoption do not contain any standards or requirements which exceed those imposed by Federal law at 29 U.S.C. §§ 701 et seq., or Federal regulation at 34 CFR Part 361. As a result, an explanation or analysis of the rules proposed for readoption, pursuant to Executive Order No. 27(1994), is not necessary.

Jobs Impact

The Department does not anticipate that any jobs would be generated or lost as a result of the rules proposed for readoption.

Agriculture Industry Impact

The rules proposed for readoption would have no impact on the agriculture industry.

Regulatory Flexibility Statement

The rules proposed for readoption would not impose reporting, recordkeeping, or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. With the exception of the biannual surveys of client transportation needs, which must be submitted by community rehabilitation programs to the Division as required by *N.J.A.C. 12:45-2.3*, the requirements imposed by these rules are on the State agency responsible for implementation of the rules. It is noted that some community rehabilitation programs who must submit the biannual survey may be small businesses. However, the preparation and submission of the biannual surveys will not impose significant costs on these programs and no professional services need be employed. As the survey provides information necessary for the Division to establish categories of expenses as a basis for transportation reimbursement, no lesser requirement or exemption can be provided for those programs that are small businesses.

Housing Affordability Impact Analysis

The rules proposed for readoption would not evoke a change in the average costs associated with housing, nor would they have an impact on the affordability of housing. The basis for this finding is that the rules proposed for readoption pertain to the delivery of vocational rehabilitation services and have nothing to do with housing.

Smart Growth Development Impact Analysis

The rules proposed for readoption would not have an impact on smart growth, nor would it evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the rules proposed for readoption pertain to delivery of vocational rehabilitation services and have nothing to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey.

Full text of rules proposed for readoption may be found in the New Jersey Administrative Code at *N.J.A.C. 12:45*.