

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.

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Special Hearing Rules

Casino Control Commission

Proposed Readoption with Amendments: N.J.A.C. 1:19

Proposed Repeal: N.J.A.C. 1:19-12.1

Authorized By: Laura Sanders, Acting Director, Office of Administrative Law.

Authority: N.J.S.A. 52:14F-5(e), (f), and (g).

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

Proposal Number: PRN 2015-022.

Submit comments by May 15, 2015, to:

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1.c, the special rules for matters transmitted to the Office of Administrative Law (OAL) by the Casino Control Commission (Commission) and for cases heard at the Commission will expire on February 4, 2015. In accordance with N.J.S.A. 52:14B-5.1.c(2), submission of this proposal to the Office of Administrative Law extends that expiration date 180 days to August 3, 2015. The Office of Administrative Law (OAL), in consultation with the Commission, has reviewed these rules and has found them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The last amendments to the rules were effective in 2008. Therefore, the Office of Administrative Law proposes to readopt these rules. There are proposed amendments to and a repeal from the rules, which are discussed below.

The OAL proposes to repeal Subchapter 12, Motions, which contains a single section regarding emergency relief. Statutory amendments to the Casino Control Act in 2011, P.L. 2011, c. 19, at N.J.S.A. 5:12-109 reassigned the authority to grant emergency relief from the Casino Control Commission to the Director of the Division of Gaming Enforcement.

Additionally, other proposed amendments to the chapter pertain only to statutory, and subsequent regulatory, changes to the Casino Control Act made pursuant to P.L. 2011, c. 19. Specifically, the amendments correct references to repealed legal authorities with references to current statutes and rules and delete provisions no longer supported in the amended statutes. The deletions eliminate references to the judge's authority to propound interrogatories during the contested case process, the alternative to serve hearing notices to parties in person, and the Commission's authority to grant a rehearing.

The summary of the rules proposed for readoption follows:

N.J.A.C. 1:19-1.1 establishes the applicability of these rules to contested case hearings arising under the Casino Control Act.

N.J.A.C. 1:19-2.1 defines initial decision as the recommended findings of fact and conclusions of law issued by an administrative law judge, Commission member, or hearing officer appointed pursuant to N.J.S.A. 5:12-107.a.

Subchapters 3 and 4 are reserved.

N.J.A.C. 1:19-5.1 sets forth a procedure to be followed by an attorney who intends to represent more than one party in the same or a substantially related matter. This procedure has been successfully utilized by the Commission for some time. The procedure provides for the filing of a petition with the Commission, or the OAL, if the matter has been transmitted for hearing, to ensure that the attorney does not represent parties where a conflict of interest exists. A decision on the petition will be issued by the Commission's chair, or the chair's designee, and may be appealed to the full Commission, or may be issued by an administrative law judge and appealed to the OAL Director.

Subchapter 6 is reserved.

N.J.A.C. 1:19-7.1 provides for the service of notices. Notices must be served at least 10 days before the hearing. The proposed amendment deletes the language "personally or" since the previous statutory support, N.J.S.A. 5:12-65 was repealed in 2011 and the current statutory provision, N.J.S.A. 5:12-108.e provides that notices of hearing shall be delivered or sent by certified mail.

Subchapter 8 is reserved.

N.J.A.C. 1:19-9.1 provides that where an applicant or respondent is being prosecuted for an offense listed in N.J.S.A. 5:12-86.c, the case shall be placed on the inactive list at that individual's request. Additionally, the subchapter sets forth the obligations of an applicant or respondent whose case has been placed on the inactive list and the consequences for failure to fulfill those obligations, including that the Commission may take final action. The proposed amendment updates the regulatory reference in subsection (b) from the now-repealed N.J.A.C. 19:42-3.3 to the current N.J.A.C. 19:42A-2.5.

N.J.A.C. 1:19-9.2 governs adjournments.

N.J.A.C. 1:19-10.1 specifies mandatory discovery requirements, including the obligation to provide copies of any documents which are intended to be introduced at the hearing, the list of names and addresses of all witnesses intended to be called at the hearing, the qualifications of

each anticipated expert witness, and a copy of any reports prepared by the witness or a summary of the testimony that the witness will offer.

Subchapter 11 is reserved.

N.J.A.C. 1:19-12.1 pertains to emergency relief. This subchapter is proposed for repeal since statutory changes in 2011 to the Casino Control Act, N.J.S.A. 5:12-1 et seq., reassign the authority for emergency relief from the Commission to the Director of the Division of Gaming Enforcement.

In cases retained by the Commission, N.J.A.C. 1:19-13.1 permits the chair to appoint a representative to conduct a prehearing conference and issue a prehearing memorandum. The proposed amendment to subsection (c) updates the reference from the now-repealed N.J.A.C. 19:42-2.11 to N.J.A.C. 19:42A-3.2(b), which provides that settlements reached at a prehearing conference shall be submitted to the Commission for disposition.

N.J.A.C. 1:19-14.1 provides specific provisions concerning contested case hearings. The proposed amendment corrects statutory references to the repealed N.J.S.A. 4:12-65 and 67 to the correct corresponding statutory provisions and specifies that process may be served either personally or by certified mail and that notices need only be served by certified mail. The proposed amendment also deletes paragraphs that pertained to the judge's authority to propound written interrogatories and the Commission to order rehearings, since their statutory and regulatory support is now repealed.

N.J.A.C. 1:19-15.1 describes the special rule of evidence which applies to Commission hearings that permit any relevant evidence, not subject to a claim of privilege, to be admitted regardless of any rule of evidence which would bar such evidence in judicial matters. The proposed amendment updates statutory references from N.J.S.A. 5:12-70.a(6) to N.J.S.A. 5:12-107.a(6) and corrects the reference to N.J.S.A. 5:12-70.d, which appears to have been a typographical error, to N.J.S.A. 5:12-70.b, which provides that evidence admitted pursuant to N.J.A.C. 1:19-15.1(a)1 shall be sufficient in itself to support a finding.

As the OAL 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 rules proposed for re adoption with amendments and repeal permit the fair and efficient hearing process for resolution of issues arising at the Casino Control Commission. Updating referenced legal authorities and practices to align with changes to the Casino Control Act in 2011 better informs the public and the legal community about the conduct of these cases.

Economic Impact

The rules proposed for re adoption with amendments and repeal are not anticipated to have any substantial economic impact. These rules are designed to provide for efficient and effective hearings on contested Casino Control Commission matters and, therefore, do not have a significant economic impact. In fact, with the proposed amendments and repeal, the practices that occur in Casino Control Commission cases will be made clearer to the public and the legal community.

Federal Standards Statement

A Federal standards analysis is not required because the contested case hearing procedures, of which the rules proposed for re adoption with amendments and repeal are a part, are promulgated in implementation of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1 et seq., and are not subject to any Federal standards or requirements.

Jobs Impact

The rules proposed for re adoption with amendments and repeal will not generate or cause the loss of any jobs.

Agriculture Industry Impact

The rules proposed for re adoption with amendments and repeal will not impact on the agriculture industry.

Regulatory Flexibility Statement

The rules proposed for re adoption with amendments and repeal impose no reporting or recordkeeping requirements. Compliance requirements

are imposed on small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., who may be parties in a contested case proceeding or attorneys who represent the parties. These requirements are procedural in nature and apply to all who are involved in litigation. Attendant costs may include those which are administrative (preparation of documents, etc.) and/or related to possible employment of legal counsel. The uniform application of these requirements is necessary to ensure fairness and efficiency in contested case matters; therefore, lesser requirements or exemptions for small businesses are not provided.

Housing Affordability Impact Analysis

The rules proposed for re adoption with amendments and repeal will have no impact on housing affordability, as the rules concern contested case hearings arising before the Casino Control Commission.

Smart Growth Development Impact Analysis

The rules proposed for re adoption with amendments and repeal will have no impact on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan, as the rules concern contested case hearings arising before the Casino Control Commission.

Full text of the rules proposed for re adoption may be found in the New Jersey Administrative Code at N.J.A.C. 1:19.

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

SUBCHAPTER 7. SERVICE AND FILING OF PAPERS

1:19-7.1 Notices

Unless otherwise provided by the Casino Control Act, orders and notices related to a contested case including, without limitation, notices concerning the scheduling of conferences, hearings, deferrals, reinstatement after deferrals, and postponements shall be served upon all parties by ordinary mail, except that hearing notices in proceedings against a licensee or registrant shall be served [personally or] by certified mail. All hearing notices shall be served at least 10 days prior to the hearing.

1:19-9.1 Placement on inactive list pending disposition of charges against applicant or respondent

(a) (No change)

(b) An applicant or respondent whose case has been placed on the inactive list pursuant to this section shall notify the judge within 10 days of the disposition of the charge that was the basis for the deferral. Any applicant or respondent who fails to comply with the notice requirements of this subsection shall be deemed to have withdrawn his or her request for a hearing pursuant to N.J.A.C. 1:1-19.2. Unless the applicant or respondent submits to the Casino Control Commission (Commission) a satisfactory written explanation for his or her failure within 20 days of the date of disposition, the Commission may take final action on the case pursuant to N.J.A.C. [19:42-3.3] **19:42A-2.5**.

(c)-(d) (No change)

SUBCHAPTERS 11. AND 12. (RESERVED)

[SUBCHAPTER 12. MOTIONS

1:19-12.1 Emergency relief; suspension, limitation or conditioning of license or registration

(a) Pursuant to N.J.S.A. 5:12-104, 108 and 129, the Casino Control Commission (Commission) may, upon application by the Division of Gaming Enforcement, issue an emergency order for the suspension, limitation or conditioning of any registration or license, other than a casino license, pending a final decision in a contested case.

(b) Applications for emergency relief shall be served by the Commission on all parties pursuant to N.J.A.C. 19:42-4.1 and, if the termination of existing agreements between a party and a casino licensee or applicant is requested, on all casino licensees and applicants.

(c) Applications for emergency relief may be granted without a plenary hearing upon a finding by the Commission that there is a reasonable possibility that the licensee or registrant will be found

disqualified pursuant to N.J.S.A. 5:12-86 or that such action is necessary to:

1. Prevent a violation of the Casino Control Act (Act) or the criminal laws of this State;
2. Preserve the public peace, health, safety, morals, good order and general welfare; or
3. Preserve the public policies of the Act.

(d) A person on whom an emergency order has been served shall thereafter be entitled to a plenary hearing.]

1:19-13.1 Conduct of prehearing conference by a designated representative of the Casino Control Commission

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

(c) Settlements reached at a prehearing conference scheduled pursuant to (a) above shall be submitted to the Commission for disposition pursuant to N.J.A.C. [19:42-2.11] **19:42A-3.2(b)**.

1:19-14.1 Rules concerning all contested cases

(a) In addition to any authority granted in the Uniform Administrative Procedure Rules (UAPR), N.J.A.C. 1:1, the judge shall have the authority to:

1. Administer oaths and to require testimony under oath, pursuant to N.J.S.A. 5:12-[65]**107.a(3)**;

2. Serve process [or notices in a manner provided for the service of process and notice in civil actions in accordance with the rules of the court] **either personally or by certified mail and serve notices by certified mail**, pursuant to N.J.S.A. 5:12-[65]**108**;

3. Issue subpoenas and compel the attendance of witnesses at any place within this State, pursuant to N.J.S.A. 5:12-[65]**107.f** and 5:12-108[(f),f];

[4. Propound written interrogatories, pursuant to N.J.S.A. 5:12-65;]

Recodify existing 5. and 6. as **4. and 5.** (No change in text.)

(b) (No change.)

(c) In any contested case, the Commission shall have the authority to:

1. Grant testimonial immunity, pursuant to N.J.S.A. 52:12-[67]**107.g**; **and**

[2. Order a rehearing, pursuant to N.J.S.A. 52:12-107(d); and]

[3.] **2.** (No change in text.)

1:19-15.1 Special evidence rules

(a) The following special rules of evidence shall apply:

1. Any relevant evidence, not subject to a claim of privilege, may be admitted regardless of any rule of evidence which would bar such evidence in judicial matters, pursuant to N.J.S.A. 5:12-[70a(6)]**107.a(6)**;

2. Evidence admitted pursuant to (a)1 above shall be sufficient in itself to support a finding, pursuant to N.J.S.A. 5:12-[70d]**70.b** and 107.a(6); and

3. (No change.)

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The agency proposal follows:

Summary

The Department of Education (Department) proposes amendments to N.J.A.C. 6A:16, Programs to Support Student Development, to comply with various revisions to and provisions of State law.

P.L. 2013, c. 71 (N.J.S.A. 18A:40-41.6), known as the “Scholastic Student-Athlete Safety Act,” requires student-athletes in grades six through 12 in public and nonpublic schools to have a physical exam using the Preparticipation Physical Evaluation (PPE) form before participating in school-sponsored interscholastic or intramural athletic teams or squads and requires health care practitioners who examine and screen student-athletes to complete a Student-Athlete Cardiac Screening professional development module; P.L. 2013, c. 209 (N.J.S.A. 18A:40-41), known as the “Sudden Cardiac Arrest Prevention Act,” requires the development of a pamphlet to provide student-athletes and their parents or guardians with information about sudden cardiac arrest; P.L. 2012, c. 51 (N.J.S.A. 18A:40-41a and b), known as “Janet’s Law,” requires public and nonpublic schools to have automated external defibrillators (AEDs) and to establish emergency action plans for responding to sudden cardiac events; P.L. 2013, c. 146 (N.J.S.A. 18A:40-44) concerns a child’s exposure to media violence and requires an informational pamphlet to be distributed to the parents or guardians of public school students and to be made available to nonpublic schools; P.L. 2014, c. 3 (N.J.S.A. 18A:40-27.1) allows the provision of emergency care to preschool students attending a nonpublic school; N.J.S.A. 18A:40-34 ensures nonpublic school students who are knowingly without medical coverage have access to information about the NJ FamilyCare program; and N.J.S.A. 18A:40-28 addresses district board of education contracts with a public or private agency for the provision of nursing services.

Due to the above-mentioned laws, the Department proposes to amend N.J.A.C. 6A:16-1.3, Definitions; N.J.A.C. 6A:16-2.1, Health services policy and procedural requirements; N.J.A.C. 6A:16-2.2, Required health services; N.J.A.C. 6A:16-2.3, Health services personnel; N.J.A.C. 6A:16-2.5, School health services to nonpublic schools; and N.J.A.C. 6A:16-5.2, School Violence Awareness Week.

The Department also proposes to amend the previously mentioned sections and N.J.A.C. 6A:16-10.1, Home or out-of-school instruction due to a temporary or chronic health condition, and N.J.A.C. 6A:16-11.1, Adoption of policies and procedures, to provide clarity and closer alignment with State law.

The following is a description of the sections proposed for amendment and a summary of the proposed rulemaking:

Subchapter 1. General Provisions

N.J.A.C. 6A:16-1.3 Definitions

The section defines terms used throughout the chapter.

The Department proposes a definition for “automated external defibrillator (AED)” that is consistent with the definition in Janet’s Law at N.J.S.A. 18A:40-41a. The proposed definition is not identical to the definition referenced in Janet’s Law and defined at N.J.S.A. 2A:62A-24 because the Department chose for the purpose of this chapter to focus on what the device is capable of and how it functions, rather than the device approval process. Therefore, the Department omitted the following language that is contained in the definition at N.J.S.A. 2A:62A-24: “Has received approval of its pre-market notification filed pursuant to 21 U.S.C. § 360(k) from the United States Food and Drug Administration.” The establishment and implementation of an emergency action plan for responding to a sudden cardiac event, including the use of an AED, is proposed at N.J.A.C. 6A:16-2.1(a)4vi pursuant to Janet’s Law.

The Department proposes an amendment to the definition “code of student conduct” to replace “N.J.A.C. 6A:16-7.5” with “N.J.A.C. 6A:16-7.1” to cite the correct section on the code of student conduct within the chapter.

The Department proposes an amendment to the definition of “Do Not Resuscitate order” for stylistic improvement.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Programs to Support Student Development

Proposed Amendments: N.J.A.C. 6A:16-1.3, 2.1, 2.2, 2.3, 2.5, 5.2, 10.1, 10.2, and 11.1

Authorized By: New Jersey State Board of Education, David C.

Hespe, Commissioner, Secretary.

Authority: N.J.S.A. 18A:40-1, 4, 12, 23 through 31, 34, 41, and 44; and 18A:40A-12.

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

Proposal Number: PRN 2015-024.

Submit written comments by May 15, 2015, to:

Susan Martz, Assistant Commissioner
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River View Executive Plaza