

(e) The agency shall provide a handbook or pamphlet to each adult adoptee, birth parent, and adoptive parent that outlines the range of services that may be included in a search, the confidentiality [rights/responsibilities] **rights and responsibilities** of all parties that are involved in the search and the costs associated with the search.

(a)

## CHILD PROTECTION AND PERMANENCY

### Legal Guardianship

#### Proposed Readoption with Amendments: N.J.A.C. 10:132A

#### Proposed Repeals and New Rules: N.J.A.C. 10:132A-1.7 and 1.11

Authorized By: Allison Blake, Ph.D., L.S.W., Commissioner,  
Department of Children and Families.

Authority: N.J.S.A. 2A:4A-20 et seq., 2A:4A-37, 30:1-14 and 15,  
9:3A-7g, 9:3A-9, and 30:4C-4(d).

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

Proposal Number: PRN 2015-159.

Submit written comments by February 19, 2016, to:

Pamela Wentworth, MSW, L.S.W.  
Department of Children and Families  
PO Box 717  
Trenton, New Jersey 08625  
or  
[rules@dcf.state.nj.us](mailto:rules@dcf.state.nj.us)

The agency proposal follows:

#### Summary

The Division of Child Protection and Permanency (“CP&P” or “Division”) proposes to readopt with amendments the rules governing Legal Guardianship, and the CP&P Kinship Legal Guardianship Subsidy Program. The rules affect children living in kinship guardianship situations, those who will enter those arrangements in the future, and the families who care for them.

N.J.A.C. 10:132A has been in effect since 2003. Amendments proposed herein allow for successor guardians are driven by Federal requirements in the Preventing Sex Trafficking and Strengthening Families Act of 2014 (Pub. L. 113-183).

Pursuant to N.J.S.A. 52:14B-5.1.c(2), N.J.A.C. 10:132A expires on April 28, 2016. The Department has reviewed these rules and has determined that they continue to be necessary, proper, and reasonable for the purpose for which they were originally promulgated.

The Division proposes to amend language throughout the chapter to reflect that the name of the Division was changed from the Division of Youth and Family Services (DYFS) to the Division of Child Protection and Permanency (CP&P) in 2012.

The Division is proposing to define the term “agreement” in N.J.A.C. 10:132A-1.3, because the term was previously left undefined. The CP&P Kinship Legal Guardianship Subsidy Program derives significant funding from the Federal Government under Title IV-E of the Social Security Act, and many requirements applicable to the use of those funds stipulate that an agreement for participation will be entered into and satisfy specified requirements. The new successor guardian requirements also require that the name of any successor guardian be included in such an agreement.

The Division is proposing to add new N.J.A.C. 10:132A-1.6(c) and (d) to allow for the continuation of the Kinship Legal Guardianship Subsidy (KLG Subsidy) if the relative caretaker originally approved for the program dies or becomes incapacitated, and the child is placed in the care of a successor guardian named in the original agreement or an amendment to it. This provision is required as a condition of the State’s receipt of Federal funding under Title IV-E of the Social Security Act.

The Division is proposing to largely eliminate the program standards in N.J.A.C. 10:132A-1.7 and replace them with a requirement that

recipients of the KLG Subsidy meet the requirements applicable to licensed resource homes under N.J.A.C. 10:122C. This is consistent with a long-standing practice of the Division, and ensures uniformity in the standards imposed on persons providing care for children in the care and custody of the Division. Amendments are proposed to N.J.A.C. 10:132A-1.6(b)6, 1.8, and 1.9 to reflect this change, and replace references to the program standards previously included in N.J.A.C. 10:132A-1.7.

The Division is proposing to repeal existing N.J.A.C. 10:132A-1.11 on dispute resolution, and change the cross-reference at N.J.A.C. 10:132A-1.8(b)2 to instead refer to N.J.A.C. 10:120A. That chapter deals in its entirety with dispute resolution, and this change allows for the consolidation of dispute resolution rules into that single chapter. No substantive change is proposed by this to the procedures or rules governing disputes under N.J.A.C. 10:132A.

The Division is proposing new N.J.A.C. 10:132A-1.11 to articulate the duration and amount of subsidy payments provided under this chapter.

The Division is proposing to repeal N.J.A.C. 10:132A-1.11, Dispute Resolution, because it is redundant of N.J.A.C. 10:120A.

Finally, the Division is proposing changes to N.J.A.C. 10:132A-3.3 to allow for the Division to provide the courts with required kinship caregiver assessments in successor guardian situations. This change is proposed to accommodate the new Federal requirements.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements set forth at N.J.A.C. 1:30-3.2 and 3.2, in accordance with N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

The rules proposed for readoption with amendments, repeals, and new rules to the rules for the Legal Guardianship Subsidy Program are expected to have a positive social impact by enhancing protection and permanency for children placed with relatives by the Division. Consistent with State and Federal mandates, when a child’s parents cannot provide a safe home, the Division of Child Protection and Permanency encourages the placement of the child with relatives, rather than with foster parents unfamiliar to the child. Once the relative has cared for the child for at least one year, the rule proposed for readoption with amendments establish a program to provide financial assistance on behalf of a child whose relative makes a commitment through kinship legal guardianship to permanently care for a child when return home and adoption are not likely or feasible. The program also permits the Division to provide maintenance to children in a type of permanent placement that enables parents to retain certain rights.

The impact of the proposed amendments to the rules for each child and relative who live or move out-of-State is expected to be positive. The Division had approximately 2,000 children in the Legal Guardianship Subsidy Program in 2015. Each child has access to maintenance payments and health care coverage through the program.

The impact upon the Division is positive as the proposed amendments to the rules reflect good casework practice, as well as State and Federal mandates regarding permanency for children.

Positive reaction to the rules proposed for readoption with amendments is anticipated from relatives caring for children placed by the Division, advocacy groups representing grandparents caring for their grandchildren, child advocacy agencies, and the press.

#### Economic Impact

The rules proposed for readoption with amendments, repeals, and new rules have a positive economic impact on children placed with relatives by the Division and on the relatives with whom the children are placed. The legal guardian of each child approved for participation in the Legal Guardianship Subsidy Program receives an increased monthly maintenance payment on the child’s behalf. The program also ensures that the child has health care coverage.

In 2015, the Division had approximately 2,000 children receiving payments from the Legal Guardianship Subsidy Program.

The amendments to these rules allow the expenditure of maintenance payments on behalf of an additional, thought-to be small number of children living in the custody of successor guardians. Though the guardians may have previously been eligible to receive Resource Care subsidies, these amendments made pursuant to new Federal law would

allow the extension of kinship legal guardian subsidy payments for the first time.

**Federal Standards Statement**

The rules proposed for readoption with amendments, repeals, and new rules are proposed with an express goal of achieving compliance with Title IV-E of the Social Security Act, 42 U.S.C. § 671. As a condition of the State’s receipt of Federal funds for the provision of subsidies to Kinship Care providers, the rules in that statute must be adhered to. The amendments, new rules, and repeals are specifically responsive to new requirements to account for successor guardianship in the conduct of such program.

**Jobs Impact**

The Division anticipates that the rules proposed for readoption with amendments, repeals, and new rules will not result in the generation or loss of any jobs.

**Agriculture Industry Impact**

The rules proposed for readoption with amendments, repeals, and new rules have no impact on the agriculture industry.

**Regulatory Flexibility Analysis**

The rules proposed for readoption with amendments, repeals, and new rules govern a public child protective services agency rather than a private business establishment. The rules govern and amend a program of the Division of Child Protection and Permanency to provide financial services to children placed by the Division with relatives who have obtained kinship legal guardianship. They propose no reporting, recordkeeping, or other compliance requirements on small businesses. Therefore, a regulatory flexibility analysis is not required in accordance with the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

**Housing Affordability Impact Analysis**

There is an extreme unlikelihood that the rules proposed for readoption with amendments, repeals, and new rules would evoke a change in the affordability of housing or the average costs associated with housing because the rules apply to a kinship care subsidy program provided by the Division of Child Protection and Permanency. The program is not geographically restricted or otherwise likely to impact upon housing affordability in any area of the State.

**Smart Growth Development Impact Analysis**

The rules proposed for readoption with amendments, repeals, and new rules have no impact on smart growth development and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules pertain to a kinship care subsidy program provided by the Division of Child Protection and Permanency.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:132A.

**Full text** of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10:132A-1.7 and 1.11.

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

SUBCHAPTER 1. [DYFS] CP&P LEGAL GUARDIANSHIP SUBSIDY PROGRAM

10:132A-1.3 Definitions

(a) (No change.)

(b) The following words and terms shall have the following meaning in this chapter and not the meaning defined in N.J.A.C. 10:133-1.3:

**“Agreement” means the form promulgated by the Division, which stipulates the responsibilities of kinship guardians and forms the contractual basis for participating in the CP&P Legal Guardianship Subsidy Program and receipt of benefits thereunder, which is made publicly available on the DCF internet site.**

...

(c) In addition, the following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

“Household member” means an adult or child who resides either full-time or part-time in the home of a relative who participates in the [DYFS] CP&P Legal Guardianship Subsidy Program.

...

“Program” means the [DYFS] CP&P Legal Guardianship Subsidy Program, as defined in N.J.A.C. 10:133-1.3.

10:132A-1.6 Eligibility for the [DYFS] CP&P Legal Guardianship Subsidy Program

(a) When the Division determines kinship legal guardianship as a permanent plan for the child, the Division representative advises a relative interested in the [DYFS] CP&P Legal Guardianship Subsidy Program of the requirements for eligibility and the circumstances that require termination of the program.

(b) A child is eligible for the [DYFS] CP&P Legal Guardianship Subsidy Program when:

1.-4. (No change.)

5. The relative or successor has obtained kinship legal guardianship, pursuant to the Kinship Legal Guardianship Act, N.J.S.A. 3B:12A-5; and

6. The relative’s home meets the [program standards] **licensing standards for resource family homes** articulated in N.J.A.C. [10:132A-1.7] **10:122C**, for as long as the subsidy is paid.

**(c) Upon the death or incapacitation of the relative with whom a child was placed under (b) above, a child remains eligible for the CP&P Legal Guardianship Subsidy Program if:**

**1. The child enters the care and custody of a successor guardian named in the initial agreement or an amendment made to that agreement executed prior to the death or incapacitation of the kinship legal guardian with whom the child was placed under (b) above.**

**2. No unreasonable time has elapsed and no person has had custody of the child between the death or incapacitation of the kinship legal guardian with whom the child was placed under (b) above and the assumption of care and custody by the successor guardian.**

**3. The successor guardian is licensed or provisionally licensed as a resource family provider at the time of the child’s placement in his or her home, and that home continues to meet the licensing standards for resource family homes articulated in N.J.A.C. 10:122C, for as long as the subsidy is paid; and**

**4. Within reasonable time, not to exceed 540 days from the date that the successor guardian assumes care and custody of the child, the successor guardian petitions for kinship legal guardianship pursuant to the Kinship Legal Guardianship Act, N.J.S.A. 3B:12A-5.**

**(d) The agreement, and amendments to it, shall be executed using forms provided by the Division and in accordance with procedures provided for their use. No agreement, or amendment to it, shall be considered validly executed unless and until approved in writing by the Director or his or her designee.**

10:132A-1.7 License required

**The Division requires a relative interested in being approved for the program to satisfy the requirements for licensure as a resource family parent in accordance with N.J.A.C. 10:122C.**

10:132A-1.8 Division action

(a) The Division representative shall approve the child and the relative for participation in the [DYFS] CP&P Legal Guardianship Subsidy Program if all eligibility requirements in N.J.A.C. 10:132A-1.6 and [all program standards in N.J.A.C. 10:132A-1.7] **licensing standards for Resource Family Parents in N.J.A.C. 10:122C** are met.

(b) The Division representative shall advise a relative of a child whose case goal is kinship legal guardianship who is not approved to participate in the [DYFS] CP&P Legal Guardianship Subsidy Program, in writing, of:

1. (No change.)

2. The opportunity for dispute resolution in accordance with N.J.A.C. [10:132A-1.11] **10:120A**; and

3. (No change.)

10:132A-1.9 Circumstances requiring redetermination

(a) Approval of the child continuing to participate in the [DYFS] CP&P Legal Guardianship Subsidy Program is redetermined:

1. (No change.)

2. Whenever information becomes available to the Division representative that there has been a change in circumstances that may affect eligibility for the program in accordance with N.J.A.C. 10:132A-1.6 or that may indicate that [program standards are no longer being met in accordance with N.J.A.C. 10:132A-1.7] **the kinship guardian or successor guardian is no longer meeting the licensure requirements for resource parents specified in N.J.A.C. 10:122C.**

10:132A-1.10 Circumstances requiring termination

(a) The child's participation shall be terminated from the [DYFS] CP&P Legal Guardianship Subsidy Program when:

1. (No change.)

2. The legal guardian **or successor guardian** adopts the child;

3. (No change.)

4. Each relative approved for the program is deceased **and no successor guardian is specified in the initial agreement or amendment executed prior to all relatives being deceased;** or

5. (No change.)

10:132A-1.11 Duration and amount of subsidy

(a) **The agreement covering subsidy payments shall remain in effect regardless of family income until the child's 18th birthday. Subsidy payments will be terminated if the Division determines that the kinship legal guardian is no longer legally responsible for the child or the child is no longer receiving support from the kinship legal guardian.**

(b) **The amount of subsidy payments under this chapter shall be determined by the Director or designee, but shall not exceed 100 percent of the applicable resource care board rate. One-time, non-recurring expenses may be reimbursed in an amount not to exceed \$2,000 if the Director or designee determines that such expenses were necessarily incurred in facilitation of the child's placement. Non-recurring expense reimbursement may not exceed \$2,000 per placement.**

(c) **In the event of the death or incapacitation of the guardian, subsidy payments shall be transferred to a successor guardian named in the agreement or an amendment to the agreement in accordance with N.J.A.C. 10:132A-1.6.**

#### SUBCHAPTER 3. DIVISION RESPONSIBILITIES UNDER THE LAW

10:132A-3.3 Kinship caregiver assessment done by the Division

(a) The Division shall provide the court with a kinship caregiver assessment pursuant to the Kinship Legal Guardianship Act at N.J.S.A. 30:4C-85, when a relative is seeking kinship legal guardianship for a child:

1.-2. (No change.)

3. Who has an otherwise open or currently active case with the Division **or, if the child is being placed with a successor guardian, who previously had an open case with the Division that was closed upon placement with a kinship caregiver now deceased or incapacitated.**

(b)-(d) (No change.)

## CORRECTIONS

(a)

### THE COMMISSIONER

#### Pat Search

#### Proposed Amendments: N.J.A.C. 10A:3-5.6 and 10A:34-3.3

Authorized By: Gary M. Lanigan, Commissioner, Department of Corrections.

Authority: N.J.S.A. 2A:154-3 and 4, 2C:58-15, 30:1B-6, 30:1B-10, 30:4-123.47.c, and 52:17B-169; and the Federal Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. §§ 15601 et seq.

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

Proposal Number: PRN 2015-165.

Submit written comments by February 19, 2016, to:

Kathleen Cullen, Administrative Rules Unit  
Office of the Commissioner  
New Jersey Department of Corrections  
PO Box 863  
Trenton, NJ 08625-0863  
or via e-mail at: [ARU@doc.nj.gov](mailto:ARU@doc.nj.gov)

The agency proposal follows:

#### Summary

The Department proposes amendments to the rules regarding pat searches in State and municipal facilities as set forth at N.J.A.C. 10A:3-5.6 and 10A:34-3.3, respectively, to update these rules to be consistent with the Federal Prison Rape Elimination Act of 2003 (PREA). PREA provides specific pat search standards at 42 U.S.C. § 115-15(a) through (f) and the Department proposes to amend its rules accordingly, to limit the conduct of pat searches of female inmates to female staff.

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

#### Social Impact

The proposed amendments to N.J.A.C. 10A:3-5.6(d) and 10A:34-3.3(d) are expected to have an overall positive impact on both inmates and staff. The Department anticipates a positive social impact to result from the proposed amendments as N.J.A.C. 10A:3-5.6 and 10A:34-3.3 will be consistent with the PREA pat searches standards.

#### Economic Impact

Additional funding is not necessary to implement the requirements of the proposed amendments. The cost of meeting and maintaining the requirements of the proposed amendments is met by the Department through the established budget with funds allocated by the State.

#### Federal Standards Statement

The proposed amendments are promulgated under the authority of the rulemaking requirements of the Department of Corrections as established at N.J.S.A. 30:1B-6 and 30:1B-10. The proposed amendments comply with and do not exceed the Federal requirements established by the Federal Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. §§ 15601 et seq., therefore, a Federal standards analysis is not required.

#### Jobs Impact

The proposed amendments will cause neither the generation nor the loss of any jobs.

#### Agriculture Industry Impact

The proposed amendments shall have no impact on the agriculture industry.

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined under the Regulatory