

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.

CHILDREN AND FAMILIES

(a)

HEALTH

CHILD PROTECTION AND PERMANENCY

HEALTH SYSTEMS BRANCH

CERTIFICATE OF NEED AND HEALTHCARE

FACILITY LICENSURE PROGRAM

Substance Affected Infants

Proposed New Rules: N.J.A.C. 3A:26

Proposed Amendments: N.J.A.C. 8:43A-1.2 and 28.7 and 8:43G-1.2 and 2.13

Authorized By: Allison Blake, Ph.D., L.S.W., Commissioner,
Department of Children and Families, and Cathleen D. Bennett,
Commissioner, Department of Health, with the approval of the
Health Care Administration Board.

Authority: N.J.S.A. 9:3A-7f, 9:6-8.15, and 30:4C-4(h).

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

Proposal Number: PRN 2017-142.

Submit written comments by October 20, 2017, to:

Pamela Wentworth, M.S.W., L.S.W.
Department of Children and Families
PO Box 717
Trenton, New Jersey 08625
or rules@dcf.state.nj.us

The agency proposal follows:

Summary

The Department of Children and Families proposes new N.J.A.C. 3A:26, Substance Affected Infants, and the Department of Health proposes amendments to effectuate the proposed new rules by the Department of Children and Families.

As both Departments have 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.

The intent of these proposed new rules and amendments is to ensure New Jersey's compliance with the requirement in the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. §§ 5101 et seq.) that states have a system by which healthcare providers must report to child protective services all infants born and identified as affected by substance abuse, withdrawal symptoms resulting from prenatal drug exposure, or a fetal alcohol spectrum disorder.

The Department of Children and Families is proposing a new rules to specify the content and process by which hospitals and birthing centers

shall make reports to the Division of Child Protection and Permanency of the birth of infants whose mother had a positive toxicology screen for a controlled substance or metabolite thereof during pregnancy or at the time of delivery; who have a positive toxicology screen for a controlled substance after birth that is reasonably attributable to maternal substance use during pregnancy; who display the effects of prenatal controlled substance exposure or symptoms of withdrawal resulting from prenatal controlled substance exposure; or who display the effects of a fetal alcohol spectrum disorder (FASD).

The provisions of this rulemaking would also specify that all reports received under it are to be treated as confidential records in accordance with N.J.S.A. 9:6-8.10a.

The Department of Health is proposing supportive amendments at N.J.A.C. 8:43A-28.7, Birth Centers, and 8:43G-2.13, Hospital Licensing Standards, to require that facilities subject to licensure under those two chapters implement policies requiring that reports of substance affected infants be made in accordance with the newly proposed N.J.A.C. 3A:26.

Social Impact

The Department anticipates a positive social impact of the proposed new rules and amendments, which will provide clear guidance to hospitals and birthing centers regarding obligations to report particular forms of harm to infants.

Economic Impact

The proposed new rules and amendments will not have a discernible economic impact on the facilities. Policies will need to be implemented requiring some additional reporting to the Division of Child Protection and Permanency, but it is not anticipated that such will result in any more than negligible costs to regulated facilities. Many facilities are believed to be making such reports in accordance with N.J.S.A. 9:6-8.10 already.

The Department received \$3,193,243 for Fiscal Year 2017 through the Federal Child Abuse Prevention and Treatment Act, 42 U.S.C. §§ 5101 et seq., under the CAPTA basic appropriation, CAPTA community-based appropriation, and the Children's Justice Act appropriation. These rules maintain the Department's compliance with 42 U.S.C. § 5106a(b)(2)(B)(ii) by requiring that health care providers notify the child protective services system of substance affected infants.

Federal Standards Statement

The Child Abuse Prevention and Treatment Act (42 U.S.C. §§ 5101 et seq.) requires that the health care provider must notify child protective services of infants born and identified as affected by substance abuse, withdrawal symptoms resulting from prenatal drug exposure, or a fetal alcohol spectrum disorder, and that states have systems in place for the facilitation of these reports. The proposed new rules and amendments would ensure New Jersey's compliance with this requirement.

Jobs Impact

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

Agriculture Industry Impact

The proposed new rules and amendments have no impact on the agriculture industry.

Regulatory Flexibility Analysis

Hospitals and birthing centers may be considered small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since the proposed new rules and amendments impose reporting, recordkeeping, and other compliance requirements on these agencies, a regulatory flexibility analysis is required.

These small businesses are not exempt from these requirements because they are necessary to protect the health, safety, and welfare of infants born substance affected. No capital expenditures are imposed by the proposed new rules and amendments.

Housing Affordability Impact Analysis

The proposed new rules and amendments have no impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the proposed new rules and amendments would evoke a change in the average costs associated with housing because the proposed new rules and amendments pertain to hospitals and birthing centers reporting the birth of substance affected infants to the Division of Child Protection and Permanency.

Smart Growth Development Impact Analysis

The proposed new rules and amendments have no impact on smart growth and there is an extreme unlikelihood that the proposed new rules and amendments 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 proposed new rules and amendments pertain to hospitals and birthing centers reporting the birth of substance affected infants to the Division of Child Protection and Permanency.

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

**CHAPTER 26
SUBSTANCE AFFECTED INFANTS**

SUBCHAPTER 1. REPORTS OF SUBSTANCE AFFECTED INFANTS

3A:26-1.1 Reports of substance affected infants

(a) **The Division of Child Protection and Permanency shall receive reports of substance affected infants from ambulatory care facilities licensed under N.J.A.C. 8:43A and hospitals licensed under N.J.A.C. 8:43G.**

(b) **Upon receipt of a report pursuant to (a) above, the Division shall first determine if such report is an allegation of child abuse or neglect pursuant to N.J.S.A. 9:6-1 et seq., and if a determination that a report is an allegation of child abuse or neglect, respond in accordance with applicable law, including N.J.A.C. 3A:10.**

(c) **For reports made pursuant to (a) above that are not determined to be allegations of child abuse or neglect, the Division shall take steps to provide services to substance affected infants and parents of substance affected infants on a voluntary basis for the purpose of ensuring that opportunity is given to implement a plan to ensure the safety of that infant.**

(d) **All reports made pursuant to this chapter shall be considered child abuse investigative records and treated as confidential pursuant to N.J.S.A. 9:6-8.10a.**

3A:26-1.2 Definitions

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

“Division” means the Division of Child Protection and Permanency in the Department of Children and Families.

“Substance affected infant” means an infant: whose mother had a positive toxicology screen for a controlled substance or metabolite thereof during pregnancy or at the time of delivery; who has a positive toxicology screen for a controlled substance after birth that is reasonably attributable to maternal substance use during pregnancy; who displays the effects of prenatal controlled substance exposure or symptoms of withdrawal resulting from prenatal controlled substance exposure; or who displays the effects of a fetal alcohol spectrum disorder (FASD).

3A:26-1.3 Content of reports

(a) Reports made pursuant to N.J.A.C. 3A:26-1.1 must include the following information:

- 1. The name of the substance affected infant, if known;**
- 2. The names of the substance affected infant’s mother and father, if known;**
- 3. The home address of the substance affected infant’s mother and father, if known;**
- 4. Information on the types of substances affecting the substance affected infant, and any harm caused to the child as a result; and**
- 5. Information on circumstances known to the reporter that would impact upon an evaluation of the situation, including, but not limited to, awareness of medications prescribed to the mother of the substance affected infant.**

CHAPTER 43A

MANUAL OF STANDARDS FOR LICENSING OF AMBULATORY CARE FACILITIES

SUBCHAPTER 1. DEFINITIONS AND QUALIFICATIONS

8:43A-1.3 Definitions

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

... **“Substance affected infant” means the term as defined at N.J.A.C. 3A:26-1.2.**

SUBCHAPTER 28. BIRTH CENTERS

8:43A-28.7 Additional policies and procedures

(a)-(d) (No change.)

(e) **The birth center shall establish and implement written policies and procedures for the reporting of suspected child abuse or neglect to the Division of Child Protection and Permanency in compliance with N.J.S.A. 9:6-1 et seq.**

(f) **The birth center shall establish and implement written policies and procedures for the reporting of all substance affected infants to the Division of Child Protection and Permanency in accordance with N.J.A.C. 3A:26.**

CHAPTER 43G

HOSPITAL LICENSING STANDARDS

SUBCHAPTER 1. GENERAL PROVISIONS

8:43G-1.2 Definitions

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

... **“Substance affected infant” means the term as defined at N.J.A.C. 3A:26-1.2.**

SUBCHAPTER 2. LICENSURE PROCEDURE

8:43G-2.13 Child abuse and neglect and substance affected infants

(a) **The facility shall establish and implement written policies and procedures, reviewed by the Department and revised as required by the Department, for reporting all diagnosed and/or suspected cases of child abuse and/or neglect in compliance with N.J.S.A. 9:6-1 et seq., and for**

reporting substance affected infants in accordance with N.J.A.C. 3A:26.

(b) The facility shall have in effect written policies and procedures reviewed by the Department and revised as required by the Department to include, but not be limited to, the following:

1. The designation of a staff member(s) to be responsible for coordinating the reporting of diagnosed and/or suspected cases of child abuse and/or neglect on a 24-hour basis, recording the notification to the Division of [Youth and Family Services] **Child Protection and Permanency** on the medical record, and serving as a liaison between the facility and the Division of [Youth and Family Services] **Child Protection and Permanency**;

2. (No change.)

3. The provision of education and/or training programs to appropriate persons regarding the identification and reporting of diagnosed and/or suspected cases of child abuse and/or neglect and regarding the facility's policies and procedures on at least an annual basis.

[Note: Copies of N.J.S.A. 9:6-1 et seq. can be obtained from the local district office of the Division of Youth and Family Services or from the Office of Program Support, Division of Youth and Family Services, Trenton, New Jersey 08625.]

(a)

OFFICE OF LICENSING

Manual of Requirements for Children's Group Homes

Proposed Amendments: N.J.A.C. 3A:56-1.2, 1.3, 2.1, 3.2, 3.3, 3.4, 3.7, 3.8, 3.10, 4.1, 4.3, 4.4, 4.6, 5.1, 5.2, 5.3, 5.4, 5.6, 5.7, 5.8, 6.1, 6.2, 6.3, 6.6, 6.8, 6.10, 6.11, 6.14, 6.15, 7.2, 7.4, 7.5, 7.6, 7.7, 8.1, 8.2, 9.1, 9.13, 9.14, 9.18, 10.1, 10.2, 10.3, 10.4, 10.5, 10.8, 10.9, 10.15, 10.16, 10.17, 10.18, 10.20, and 10.25

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

Authority: N.J.S.A. 30:1-14 and 15 and 30:4C-4.

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

Proposal Number: PRN 2017-185.

Submit written comments by October 20, 2017, to:

Pamela Wentworth, M.S.W., L.S.W.
 Department of Children and Families
 Office of Policy and Regulatory Development
 PO Box 717
 Trenton, New Jersey 08625
 or dcfrules@def.state.nj.us

The agency proposal follows:

Summary

As the Department 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.

Pursuant to N.J.S.A. 30:1-14 and 15, as applied to the Department of Children and Families (Department) by N.J.S.A. 9:3A-9 and 30:4C-4, the Department of Children and Families is authorized to inspect, evaluate, and approve publicly or privately operated group homes that provide board, lodging, care, and treatment services for children who are placed or financed by the Division of Child Protection and Permanency, the Division of Children's System of Care, or any other State agency.

The definition of "supervised transitional living home" at N.J.A.C. 3A:56-1.2(b)2 is proposed for amendment to exclude homes that are located at scattered sites because they do not provide minimal supervision.

The definition of "treatment home" at N.J.A.C. 3A:56-1.2(b)4 is proposed for amendment to limit the capacity of no more than three

children in placement, when there is one treatment home parent in order to ensure the required supervision and services to each child.

N.J.A.C. 3A:56-1.3 is proposed for amendment to include a definition of "care management organization." These organizations provide certain services and collect certain information, which was formerly handled by the Division of Child Protection and Permanency.

The Department proposes to amend the definition of "placing agency" at N.J.A.C. 3A:56-1.3 to include alternative care homes and psychiatric community homes for children to reflect all six types of group homes defined at N.J.A.C. 3A:56-1.2(b).

The Department proposes to amend N.J.A.C. 3A:56-3.2(a) and (e) to require the home or agency to post "and" give children, rather than "or," a list of children's rights and a grievance procedure. Doing both reinforces the importance of this information.

The Department is proposes to amend N.J.A.C. 3A:56-3.2(a)4 to include emotional harassment or abuse in order to cover thoroughly the potential types of harassment and abuse to which a child may be exposed.

The Department requires that the home or agency give the child's parent a copy of its search policy at N.J.A.C. 3A:56-3.2(d). The Department proposes to amend N.J.A.C. 3A:56-3.3(a)8 to bring it into compliance with N.J.A.C. 3A:56-3.2(d), as N.J.A.C. 3A:56-3.3(a)8 does not currently require that the home or agency give the parent a copy of the search policy. N.J.A.C. 3A:56-3.3(a)9 is proposed for amendment to require the home or agency to inform parents that the home or agency must give them the list of children's rights and the search and seizure policy, if one exists. This is to ensure awareness on the parent's part.

The Department proposes new N.J.A.C. 3A:56-3.3(a)14 to include that the home or agency must obtain written consent from the child's parent or guardian to use any restrictive behavior management practice and to administer psychotropic medication to include all required consents in the written document given to the child's parent.

The Department proposes to amend N.J.A.C. 3A:56-3.4(a) to stipulate that psychiatric community homes for children have a governing board. The Department further proposes to amend the rule to include staff training as part of the board's advice and counsel, as the board may have expertise in this area.

As the Community Education Office of the Division of Child Protection and Permanency is no longer in existence, the Department proposes to amend N.J.A.C. 3A:56-3.7(a) to include the Department's website. The website contains child abuse and neglect information.

N.J.A.C. 3A:56-3.7(b)2 is proposed for amendment to include notifying the Office of Licensing of the death of a child while admitted to the home, as each child death needs to be reported to the Office of Licensing, regardless of where it happened.

The Department proposes to add a new notification requirement regarding bed bugs as N.J.A.C. 3A:56-3.7(b)5, due to the prevalence of bed bug infestations.

N.J.A.C. 3A:56-3.7(c)2 is proposed for deletion because a home cannot relocate to a building not approved for habitation by municipal officials. The Department proposes new N.J.A.C. 3A:56-3.7(d)5. The home or agency must notify the Office of Licensing (OOL) of a proposed renovation or alteration of the room configurations or use because the OOL must approve the change before it is made.

The Department proposes to amend N.J.A.C. 3A:56-3.7(e) to add that the CMO, care management organization, must be notified of any unauthorized absence of a child from a group home, as the CMO coordinates all care, including out-of-home placements.

At N.J.A.C. 3A:56-3.8(a), the Department proposes to limit access of the Division of Child Protection and Permanency's workers to the home's or agency's records of children under the Department's supervision. Other Departmental units have been granted access to records to allow for the change in unit names and departmental reorganization.

The Department proposes to amend N.J.A.C. 3A:56-3.8(b)2ix to state that the records of incidents and accidents are recorded by the involved staff member for clarification.

Psychiatric community homes for children are proposed to be added to N.J.A.C. 3A:56-3.8(d)1ii, as children in these homes have a treatment plan.