

# 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 Amendments: N.J.A.C. 10:140-1, 2, 3.1 through 3.9, 3.11, 4.2, 4.3, 4.4, 4.5, 5.1, 6.1, 6.3, 6.4, 7.1, 7.2 and 7.3**

**Proposed Repeal: N.J.A.C. 10:140-6.2**

**Proposed Repeal and New Rule: N.J.A.C. 10:140-4.1**

Authorized By: Jennifer Velez, 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 2011-214.

Submit written comments by December 2, 2011 to:

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The agency proposal follows:

#### Summary

The provisions in N.J.S.A. 30:4G-15 established the Personal Assistance Services Program (PASP) in the Department of Human Services. PASP was previously administered by the Division of Youth and Family Services, and was transferred to the State Office on Disability Services in October 1997. As part of the transfer, the program's rules formerly at N.J.A.C. 10:123A were recodified to N.J.A.C. 10:140, effective March 1, 1999. In accordance with the terms of Executive Reorganization Plan 001-2001, N.J.S.A. 30:6E-1 et seq., the State Office on Disability Services was elevated to the Division of Disability Services in July 2001, and currently maintains the State-level administration of the Personal Assistance Services Program as a function of the agency.

Due to the success of New Jersey's Medicaid Cash and Counseling Program (Personal Preference), whereby Medicaid recipients are given a cash allowance based on the Division's expenditure to a home care agency for their Medicaid personal care assistant (PCA) hours, the Division sought to test a cash model service delivery system in the PASP. Under the cash model, consumers are given a variety of options for using their monthly cash allowance, including the ability to hire workers of

their choosing, purchasing services or adaptive equipment from vendors or making modifications to their home or vehicle in order to promote their own independence. Consumers develop their own "Cash Management Plan" in consultation with staff of the county designated agency for approval by the Division. Feedback and anecdotal data shows that consumers can exercise greater choice, control and flexibility over their services, without any increased cost to the program. It is also believed that the cash model will make better use of informal caregivers, and thus address the Statewide shortage of professional agency-based caregivers. In March 2000, Hunterdon County PASP became the first county to pilot a cash model program followed by Essex County PASP in July 2001.

More than a decade later, both pilot counties continue to operate successfully under the cash model service delivery system. Consumers in those counties continue to express greater overall satisfaction with their services, as compared to the traditional service delivery system.

Since its inception, the Personal Assistance Services Program has had a legislatively mandated Statewide Consumer Advisory Council, which serves as a resource to the Division of Disability Services on matters pertaining to the development, implementation and evaluation of program services, and assists in evaluating the effectiveness of the PASP in meeting its objectives. In 2001, the PASP Advisory Council voted in favor of transitioning the program to a Statewide cash model service delivery system, thereby initiating the process of the program's departure from a traditional vendor agency based service delivery model.

In 2005, the Division convened a "PASP Cash Model Legislative Panel" comprised of a volunteer group of program consumers, county agency directors, PASP coordinators and Division staff, who were charged with developing a proposal to revise the Personal Assistance Service Act (PASP's enabling legislation) at N.J.S.A. 30:4G-21 to accommodate a cash model system. After over a year of work, the Panel's recommendations were incorporated into a bill, which was signed, by Governor Corzine, and became effective on November 20, 2009. The legislation restructures how personal assistant services are provided through the Personal Assistance Services Program. At present, once an individual is determined eligible for the PASP, a county-designated agency determines the number of hours, the cost of service and the vendors that will provide services. Under the new cash model, the individual consumer will determine the services to be provided and who will provide services. The cost of the services to be provided to any one consumer must not exceed the cost of services the individual received under the traditional model. PASP must remain cost neutral. The changes will enable the program to be operated under a cash model, wherein the consumer of personal assistance services exercises control over the individual workers the consumer employs, manages and directs their own service plan.

The Personal Assistance Services Program provides up to 40 hours per week of personal assistance services to individuals with permanent physical disabilities from the age of 18 through the age of 70, and is

locally administered by county-designated agencies that are approved by the Commissioner of the Department of Human Services. Personal assistance services include routine non-medical tasks that are performed by an assistant to enable individuals with disabilities to be employed, to receive training or education related to employment readiness or to participate in community-based volunteer opportunities as an alternative employment. In many cases, the PASP is the only source of support for individuals whose income and resources render them to be ineligible for similar entitlement services.

The Division is now proposing the following amendments to the existing rules to allow program operations to transition to a cash model as mandated by the 2009 legislation.

**A Summary of the Proposed Amendments Follow:**

Proposed N.J.A.C. 10:140-1.1, is amended to add the word "permanent" as a substitute for the term "chronic" as it relates to physical disabilities considered by the program. The Division is making this change because the term is consistent with other State and Federal programs that address similar subjects, including the Americans with Disabilities Act (ADA) of 1990.

N.J.A.C. 10:140-1.1(a)3 is proposed for amendment to add an example of what "community-based independent living" means.

N.J.A.C. 10:140-1.2 is amended to allow consumers on the program to purchase personal care services from a vendor if needed. The term "their employees" has been added in substitution for "personal assistants." The Division believes this change is necessary to be consistent with cash model, and will provide more diverse opportunities by which a program consumer may find potential employees. Consistent with the philosophy of consumer self direction, a consumer may opt to continue to use a vendor to meet all or part of their needs.

The proposed amendments to N.J.A.C. 10:140-1.3(a)2 and 8 change the Consumer Bill of Rights to include a reference to vendors. The change is necessary for consistency in the rule, as earlier sections of the rule mention the use of vendors.

N.J.A.C. 10:140-1.4, defines the terms and words used in this chapter. Amendments are being proposed to several definitions for the purpose of clarification, to reflect a cash and model program, or for the purpose of consistency being proposed elsewhere in the rules; these include the definitions of "assessor," "community-based independent living," "consumer," "county designated agency," "education or training" "personal assistance service" and "time sheets."

Several definitions are being proposed as new because they are necessary for the implementation of the cash model, and are used throughout the rules; these include the definitions of "cash management plan," "consumer directed services," "Division," "fiscal intermediary service organization," "parenting," "permanent physical disability," "vendor" and "volunteering."

The definition of "assessor" has been amended to expand the qualifications of the individual who is qualified to perform the required evaluations to include those with three years experience in home care. The Division believes that this change will allow more individuals to function in this role and increase the pool of available assessors, which will cause operational efficiency and better use of resources.

The definition of "community-based independent living" has been amended to exclude the word "homemaking" as a qualifying program activity, and the term "parenting" is replaced by "assistance with parenting tasks." The existing term "volunteer service" has also been changed to "volunteer or community service." The Division believes that this change is appropriate because homemaking is a normal activity of daily life that is the universal responsibility of every individual regardless of disability, and therefore should be excluded as a qualifying activity of the program. The term parenting has been amended to better reflect the programmatic intent and to clarify that PASP services are to assist the parent, not to replace them or to provide baby sitting or child care. The other changes are proposed to better clarify the respective terms.

The definition of "consumer" has been amended for structure to clarify that the individual must be currently receiving services and to mean, the individual who meets the eligibility criteria set forth in N.J.A.C. 10:140-2.1; 2.2 or (as proposed for addition) the eligibility criteria has been set aside by the Commissioner on an emergent basis, as decided on a case-

by-case basis. The Division is proposing this change to better define who may receive program services.

The definition of a "'cash management plan' or 'CMP'" has been proposed to refer to the document used by the PASP, indicating the monthly cash allowance or budget, and details the services and supports required to meet the consumer's personal care needs. The Division believes that this addition is necessary to be consistent with the cash model service delivery system.

The definition of "consumer directed services" has been proposed to describe a model of service delivery that affords the opportunity for individuals to control and manage their own services. The Division believes that this addition is necessary and consistent in identifying the consumer's role under the cash model program.

The definition of a "county designated agency" has been amended to indicate the revised role and responsibility of an agency under the cash model. The definition is amended for structure and clarity and to indicate that the PASP is established pursuant to N.J.S.A. 30:4G-13 et seq. and N.J.A.C. 10:140.

The definition of "personal assistance service" has been amended to remove the "activities of daily living" wording and replace it with "health and chore related tasks" as a more appropriate description; and to remove "the use of public or para-transportation" by replacing it with "other forms of transportation" in order to broaden the description. The Division believes that this change is necessary to broaden the definition under the cash model program.

The definition of a "permanent physical disability" is added to mean "a severe impairment of unknown duration and of a nature that limits a person's ability to perform essential activities of daily living." The Division believes that this addition is necessary and consistent with the eligibility criteria set forth in other similar Division and Federal programs.

The definition of "time sheets" has been amended to include the term "legal document" within the definition. The definition is also amended to require that the time sheets be signed by the consumer's employee. The Division believes that this change is necessary to comply with Division and Federal employment laws and practices.

The term "fiscal intermediary service organization (FISO)" has been proposed, and refers to an agency that serves as a business agent for the consumer and prepares payroll checks and other financial disbursements at the direction of the consumer. The Division believes that the additional definition is necessary and consistent with cash model programs.

The term "Division" has been proposed to mean the Division of Disability Services. The omission in previous versions of the rule was an oversight, and is being added for clarity in the rule.

The definition of "vendor" is proposed to allow consumers to purchase personal care services from businesses that are appropriately credentialed to do business in New Jersey. The Division is adding this term to allow consumers the opportunity to have increased choice in purchasing services.

A definition for "volunteering" is proposed to explain the term as it relates to program eligibility. The Division is taking this action to clarify the difference between volunteering and an avocation or hobby. Participation in an avocation is not an acceptable qualifying program activity.

N.J.A.C. 10:140-1.5(b)3 is amended to clarify the amount of time within which a program consumer must participate in community-based independent living or volunteer in order to maintain program eligibility and the time frame by which existing consumers must meet this new requirement. The Division will also institute a 90-day look back period to verify that an individual has been volunteering a sufficient amount of time in order to maintain eligibility for the program. Existing subsection (c) is deleted as it is no longer necessary under the cash model. New subsection (c) has been added to the rule to mandate that consumers provide the Division with documentation confirming the participation in required program activity. The Division is proposing these changes at this time because, in the past, some participants have exploited the volunteer provision, which previously had no quantitative standard or criteria, and have been unwilling to document their respective activities. The Division believes this amendment will make for more equitable and appropriate use of resources. Subsection (d) has been added to codify activities that

do not make a consumer eligible for PASP. These include participation in an avocation or hobby, activities related to routine parenting, other than in circumstances previously stated in the rules or homemaking duties. The Division is proposing this amendment because it believes it will bring program operations into better compliance with the legislative intent of the program. Participation in an avocation is a pastime, which cannot be regulated. Homemaking and parenting, other than noted, are activities that everyone must perform independently of work activities. The Division recognizes that assistance with homemaking and parenting, as noted, may be essential to a consumer's ability to effectively complete their qualifying program activity, and can certainly be considered in the calculation and awarding of hours, but may not be used as a qualifying task to determine eligibility. The Division is also proposing this amendment to prevent the use of PASP resources as a substitute for babysitting and child supervision that is the responsibility of any parent, regardless of the presence of a disability.

N.J.A.C. 10:140-2.1(a)1 is proposed for amendment to change the eligibility standards for receipt of services and proposes to extend the age limitation from 65 to 70 years of age. The change in age is being made to comply with the amended legislation. To be consistent with other sections of the rules, the word "permanent" is also being substituted for the term "chronic."

N.J.A.C. 10:140-2.1(a)2 is proposed for amendment to clarify that an individual must maintain physical residence in the State of New Jersey to obtain or retain eligibility for services under PASP. The Division believes that this change is appropriate, given that PASP is funded with Division dollars, and individuals should physically reside in New Jersey when receiving services, not merely maintain an address therein.

N.J.A.C. 10:140-2.1(a)5 is proposed for amendment for syntax and grammar: "shall not be" has been replaced by "is not" and "eligible applicant" has been removed to consistently refer to program participants as "consumers."

At N.J.A.C. 10:140-2.1(a)6, "county designated agency" has been replaced by the term "Division" to be consistent with other references in the rules, and adds the term "transitional housing" to the settings where services can be provided. New text has also been added to clarify that PASP services cannot be used by an individual who is residing in a setting where personal care services fall within the obligation of the residential setting, but also allows the Division Director the authority to grant exceptions in unique circumstances. The Division is proposing these changes to more comprehensively reflect the programmatic intention of the program to support individuals in community settings, and not to provide or supplement services that are the obligation of a facility. The Division also believes the language allows the services to be equitably awarded by exception in circumstances that may be unique and require individual assessment.

N.J.A.C. 10:140-2.1(a)7 adds the word "permanent" as a substitution for the term "chronic" as it relates to a physical disability. This change is being made for consistency with terminology previously used in the rules. Further, the language "and is capable of self-direction" is added to the rule in place of "requires no assistance with the coordination of therapeutic regimens." The Division believes that this change is necessary because the existing language is antiquated and does not reflect the focus on self-direction that is consistent with the cash model philosophy.

N.J.A.C. 10:140-2.1(a)8 is proposed for amendment to add the word "receive" in lieu of the term "utilize." The substitution is made for better syntax and to more accurately reflect program operations. Language has also been added to the paragraph to clarify that the cap of 40 hours of service is calculated by an aggregate of hours from all sources and programs, and the criteria under which an individual may obtain an exception to get more than 40 hours of service per week. The Division believes that this is a necessary amendment to the program's eligibility requirements in order to avoid duplication of personal care assistant services and subsequently makes more efficient use of programmatic resources.

New N.J.A.C. 10:140-2.1(b) is proposed to state that consumers must access and utilize all Federally funded entitlement programs before obtaining services from PASP. The Division believes this is a necessary

requirement that allows PASP to efficiently use its funding by serving the largest number of consumers.

New N.J.A.C. 10:140-2.1(c) is proposed to state that the Division may suspend enrollment or truncate service hours to assure that the program operates within its financial appropriation.

New N.J.A.C. 10:140-2.1(d) is proposed to explain how the program will meet obligations in times where requests for services surpass available resources, and how it will prioritize services using an order of selection. The Division believes that the new regulation is necessary to advise the public of how the program will meet its obligations if financial resources are limited.

New N.J.A.C. 10:140-2.1(e) is proposed to limit the use of PASP services to personal care needs. Services may not be used to meet other needs and accommodations related to the consumer's ability to complete qualifying program activity. The Division believes this addition to the rule is necessary to avoid confusion as to the role of the program and appropriate use of service. Further, the Division believes that the responsibility to provide reasonable accommodation, as defined by the Americans with Disabilities Act of 1990, is the responsibility of the consumer's employer, educational training program or the agency for which the consumer is volunteering, and not the responsibility of PASP.

New N.J.A.C. 10:140-2.1(f) is proposed to state the obligations of a consumer to maintain program eligibility in good standing. The Division believes that the addition of this paragraph will promote better consumer compliance with program criteria and subsequently promote program efficiency.

N.J.A.C. 10:140-2.2(a), is proposed for amendment to remove the reference to N.J.A.C. 10:140-2.1(a)5 and replace it with N.J.A.C. 10:140-2.1(a)6. This change is proposed to correct the cross-reference in this subsection.

N.J.A.C. 10:140-2.2(d) is proposed for amendment to change the exceptions to N.J.A.C. 10:140-2.1(a), by substituting the age of consumers from "65" to age "70." This amendment is required to comport with the amended PASP enabling legislation.

New N.J.A.C. 10:140-2.2(f), is proposed to limit the number of age waivers that a consumer can receive under N.J.A.C. 10:140-2.1(a)1 to one. The Division believes that the proposed change is appropriate given that the legislation extends potential eligibility by five years.

N.J.A.C. 10:140-2.3(a)2 and (b) are proposed for amendment to substitute the term "Division" in place of the term "director of county designated agency." The Division is making this change for consistency within the rules.

N.J.A.C. 10:140-3.1 is proposed for amendment to change the screening procedures by substituting the word "elicit" with the word "obtain." This change is being made to better reflect the purpose of the chapter.

N.J.A.C. 10:140-3.1(c) is proposed for amendment in three places to change the words "county designated agency" with the word "Division." This change is being made to be consistent with other changes in the rules.

N.J.A.C. 10:140-3.2(a), is proposed for amendment to remove the reference to an individual staff person of the county designated agency in the PASP assessment process. The new language refers to staff as the collective whole as opposed to a single individual. A proposed amendment is also proposed to clarify that the assessment process be "arranged" rather than "performed" by the county designated agency. The Division believes that this change is necessary to better define the new role of the county designated agency in the assessment process, and allows the county agency to utilize per diem or contract assessors that may not be employees of the agency.

N.J.A.C. 10:140-3.2(a)4 is proposed for amendment to change "Consumer Plan of Service" to "Initial Consumer Plan of Service." The Division believes this change is necessary to acknowledge that a consumer may create multiple revisions to the plan of service as their needs change.

N.J.A.C. 10:140-3.2(b), is proposed for amendment to explain the purpose of the assessment. The Division is proposing this change because it believes that a trained assessor must evaluate the client beyond the eligibility for PASP. Assessors should and do evaluate a consumer's

needs in their totality and make suggestions and referrals to other services and resources where possible. The Division believes a comprehensive assessment will better serve consumers, and will make better use of programmatic resources.

The heading of N.J.A.C. 10:140-3.3 is proposed for amendment to include "and cash management plan." This addition is being made because the cash management plan is one of the essential documents to the cash model operation of the program to be used in concert with the Consumer Plan of Service.

N.J.A.C. 10:140-3.3(a) is proposed for amendment to reflect that an individual personal assistance services plan is to be designed by the consumer in consultation with the county designated agency. The Division is proposing this change in support of the concept of consumer self-direction that is the foundation of the PASP. The term "individualized needs" has been substituted for "specific needs" to better clarify that the plan is driven by the needs of the individual client. Rule text has also been deleted that explains the role of the county designated agency in preparation of the individual personal assistance services plan. This change is being made because the text is redundant in consideration of language that has been proposed for addition to this subsection.

N.J.A.C. 10:140-3.3(b) is proposed for amendment to remove the language "both of" and the word "and" for the purposes of grammar and syntax, given that the proposed changes increase the paragraphs subsection (b) refers to, to four items. New paragraphs (b)3 and 4 are proposed to include additional items that must appear on an individual personal assistance plan. The Division is proposing the additions because they are elements needed for a cash model that were not previously needed.

Existing N.J.A.C. 10:140-3.3(c) is proposed for deletion to remove obsolete language and the subsection is replaced with language that explains the relationship between the individual personal assistance plan and the cash management plan, and the purpose of the CMP. Paragraphs (c)1 - 3 are added to explain the information contained in a CMP. The Division is proposing the amendments because they are essential to operate the program under cash model.

N.J.A.C. 10:140-3.3(d), is proposed for amendment to change the role of the county designated agency to ensure that reassessments be performed every year at date of acceptance, rather than eligibility. This change is proposed to give the county designated agency the responsibility for oversight and monitoring of reassessments as opposed to the responsibility to perform the reassessments. Language is also proposed to allow for reassessments on an as-needed basis. The Division is proposing the changes to provide for greater program oversight and to conduct reassessments more efficiently given that some consumers may be delayed in starting the program after being deemed to be eligible. N.J.A.C. 10:140-3.3(d)3 is being proposed for deletion because it is obsolete due to the change to the cash model.

N.J.A.C. 10:140-3.3(e) is proposed for amendment to replace the reference to "number of hours, in a given week" with "monthly cash allowance." "Cash management plan" replaces "plan of services" and "cash allowance" replaces "program service hours." These changes are proposed to include terminology consistent with the cash model and to remove antiquated terminology. The phrase "awarded to a consumer that are unused" is replaced with "... that remains unused." The Division is making this change for better syntax and grammar. New text is added to this subsection to state the client's ability to use their allowance is limited to the end of a calendar year to provide the consumer with additional or emergency hours and such requests for emergency or additional hours shall not be subject to appeal. The Division believes these changes are necessary to assure that any unused funding can be reconciled and reinvested in the program.

N.J.A.C. 10:140-3.3(f) is proposed for amendment to include the word "increase" as it refers to the consumer's cash allowance. The word consumer is pluralized for better grammar, and "cash allowance" is substituted for "plan of service" to be consistent with the cash model.

New N.J.A.C. 10:140-3.3(g) and (h) are proposed to explain that while a consumer may amend their cash management plan to adjust to their changing needs, a consumer may only have one active CMP at a time. A CMP shall not be considered to be active until approved by the State Program Administrator. The Division is proposing the subsections,

because it believes it to be necessary to explain how consumers can amend the CMP and to ensure program integrity.

N.J.A.C. 10:140-3.4(c), is proposed for amendment to substitute the word "county designated agency" with "Division" in reference to the program waiting list. The Division is making this change to be consistent with other areas of the rules.

N.J.A.C. 10:140-3.5(b)1 is proposed for amendment by replacing "medically related services" with "skilled professional medical services." The Division believes that this change is appropriate because it is more inclusive and better describes the type of care and services that are not available through PASP.

N.J.A.C. 10:140-3.5(b)2, is proposed for deletion to eliminate existing restrictions on the provision of transportation to consumers by their personal care assistants. The Division is making this change because it feels that the current language is obsolete in the cash model system. In the cash model, consumers employ their own assistants and are responsible for creating and supervising their duties.

N.J.A.C. 10:140-3.5(d) is proposed for deletion to allow program consumers to hire their relatives as their employees in the program. The Division is making this change as it is consistent with the cash model to allow relatives who are legal to work to be employed under the PASP.

N.J.A.C. 10:140-3.6(a)2 is proposed for amendment to add the word "Division" for the words "county designated agency" with reference to who will review requests for exceptions under the rule. The Division believes that these changes will lead to greater program oversight and monitoring.

N.J.A.C. 10:140-3.6(a)3 is proposed for deletion to remove obsolete language that is no longer necessary under cash model because the county designated agency will no longer be involved in the exception process detailed in the rule. New paragraph (a)3 is proposed to explain how consumers can appeal requests for exceptions that have been initially denied by the Division. This regulation allows consumers to appeal any decision covered under the subsection to the Division Director or their designee. The appeal must be based on a challenge to the material facts that were considered in the initial decision. The Division believes this change to be appropriate because if program staff made the initial decision then an appeal should go up the administrative hierarchy at the Division. Given that the cases are based on the unique circumstances of a given consumer and the decision may be based upon the financial or programmatic circumstances of the program at a given time, the Division Director or designee shall consider all appeals related to this subsection. The Division also believes that limiting appeals to challenges of material facts of the case will limit the number of nuisance appeals and assure that services are provided fairly and efficiently to the best interest of the program and the consumer.

N.J.A.C. 10:140-3.7(a)2 and (b), are proposed for amendment to substitute the word "Division" in place of the "director of the county designated agency" in reference to who will receive requests for exceptions to service standards and who will review those requests to review. The Division believes that the amendments are necessary to encompass the new role of the Division cash model.

N.J.A.C. 10:140-3.7(c) and (d) are proposed for deletion as they are obsolete under the cash model. Consumers will have the ability to amend their plans to accommodate any emergencies. Therefore, there will be no need for the emergency procedures that are being removed.

N.J.A.C. 10:140-3.8(b) is proposed for amendment to change the language regarding how a consumer must inform the program that they are relocating to a different county and need to transfer their services thereto. Language is proposed to place greater responsibility on the program consumer to execute this process, including providing the destination county with their current CMP. The Division believes that the proposed amendment is consistent with both the cash model and the philosophy of consumer self-direction. N.J.A.C. 10:140-3.8(c), (d) and (e) are proposed for deletion because they are not consonant with the cash model.

New N.J.A.C. 10:140-3.11(a)2 explains two circumstances under which fair hearings through the Office of Administrative Law shall not be afforded to a consumer, unless there is a challenge to a material fact. The two circumstances are situations where individuals have maxed out program eligibility due to the age criteria and situations where individuals

have been granted the maximum number of service hours. The Division believes its action is appropriate because it has proposed clarifying language in each of the rules to explain specific circumstances under which exceptions to each criteria can be granted. Given the new language, fair hearings in these matters are unnecessary as there is no challenge to the material fact and only serve to delay an adverse agency action.

The heading of Subchapter 4 is proposed for amendment to omit the word "Contracting" and replace it with "Individual Budgets." The new subchapter heading is "Individual Budgets and Fees." This change is consistent with the cash model and is proposed because program operations will be based on individual budgets under cash model.

N.J.A.C. 10:140-4.1(a) is proposed for amendment by the words "county designated agency" being deleted and replaced with the word "consumer." The Division believes this change is consistent with both the cash model and the philosophy of consumer self-direction. The Division also believes that the consumer will be empowered by assuming this role that is currently preformed by the county.

Antiquated language that reflects an obsolete contracting model has been deleted at existing paragraphs (a)1 and 2.

New N.J.A.C. 10:140-4.1(a)1 is proposed to specify that consumers can hire individuals who are eligible to work in accordance with IRS regulations, to provide personal care services.

New N.J.A.C. 10:140-4.1(a)2 is proposed to allow consumers to utilize the services from a provider agency to obtain personal care services. Agencies must be legally established to do business in the State of New Jersey.

The heading of N.J.A.C. 10:140-4.2 is proposed for amendment to remove the word "Provider" and insert the words "and Individual Budgets." The Division is proposing this change to reflect that under the cash model program, activity will be driven by and focused upon the budgets of each consumer and not on provider fees.

N.J.A.C. 10:140-4.2(a) is proposed for amendment to remove antiquated and obsolete language that references the old fee schedule. New language is proposed to explain that the individual budget will be determined by an all inclusive flat rate per hour. The subsection also states that in circumstances where wages exceed the amount stated in the subsection, the county designated agency will assume responsibility for the difference in the hourly rate. The Division believes it is necessary to control expenses under the cash model.

N.J.A.C. 10:140-4.2(b) is proposed for amendment to update the hourly rate to \$15.00 per hour from \$13.26 per hour. Language has also been removed that set a differential rate for weekends and holidays which is now obsolete. The stated rate is a flat and all-inclusive rate. The Division is making this change to make the hourly rate consistent with Medicaid. Also, the Division believes this change in the rate is necessary to accommodate the percentage fee per hour associated with the fiscal intermediary service that is required in the cash model. Understanding that the program must operate within its appropriation, each county will audit all cases as it begins effectuating the cash model and can adjust client awards to assure that spending remains within its appropriation.

N.J.A.C. 10:140-4.2(d) is proposed for amendment to remove the term "reimbursement of" personal assistant services and assessments as it is obsolete and antiquated under the cash model. New text has also been added to clarify that the Advisory Council can make recommendations to the Division regarding changes in the fees for personal assistance services. The Division believes that the changes are necessary under cash model and consistent with the statutory role of the Advisory Council.

The heading of N.J.A.C. 10:140-4.3 is proposed for amendment to include the words "cost share obligation." This change is proposed to better clarify the nature of the payments made by consumers to partially subsidize the cost of their services. The payments are actually a cost share because the level of consumer responsibility is based on a percentage of the consumer's income in relation to the cost of services.

N.J.A.C. 10:140-4.3(a) is proposed for deletion to remove antiquated and obsolete language stating that the cost share is based on the Social Service Block Grant and that the cost share is to be based on the income of the consumer and his or her spouse. A new subsection is proposed to state that the cost share will now be based on 350 percent of the Federal Poverty Level (FPL) and shall consider only the income of the eligible

consumer. Individuals with income under 350 percent of the Federal Poverty Level shall have no cost share obligation. These changes are proposed to comply with N.J.S.A. 30:4G-19.

N.J.A.C. 10:140-4.3(b) is proposed for amendment to remove the words "consumer fee" and replace them with the words "cost share obligation" as it relates to the consumer's financial responsibility to pay a percentage of income related to the cost of their services. This change is proposed to provide consistent terminology throughout the rule. A reference to the sliding fee scale at N.J.A.C. 10:140-4.3(d) is proposed for deletion because the aforementioned scale is no longer consistent with N.J.S.A. 30:4G-19, and is itself, proposed for deletion.

N.J.A.C. 10:140-4.3(c) is proposed for amendment to replace the term "consumer sliding fee scale" with the term "Consumer Cost Share Obligation Table" to provide consistency within the rule and deletes a reference to the sliding fee scale at N.J.A.C. 10:140-4.3(d) and replaces it with language referencing the table set forth in subsection (j). New language is added to the subsection to explain the new cost share obligation and that it shall be made up of income ranges and percentages of consumer responsibility based on their income level. The term "this scale" has been removed and replaced with "the Consumer Cost Share Obligation Table set forth in (j) below." The words "consumer's individual" annual gross income have been added to clarify that only the consumer's income will be considered in the determination of cost share. The term "Social Service Block Grant Act" and its reference citation has been proposed for deletion and replaced by the term "Federal Poverty Level at 350 percent," given that the amended legislation dictates that the FPL at 350 percent is the basis of the cost share.

Existing N.J.A.C. 10:140-4.3(d) is proposed for deletion to remove an out-dated reference to the cost share scale, which has been removed from the rule as explained above. The replacement subsection is proposed to explain that each consumer in the program must maintain a liability policy also known as a Worker's Compensation Policy to protect their workers under the cash model. This change is proposed by the Division as an essential requirement of the cash model.

N.J.A.C. 10:140-4.3(e) is proposed for amendment to remove the words "and that consumer's spouse" and "family" as it references income in the calculation of cost share. This change is proposed because the amended legislation states that the calculation of cost share must be based only on the income of the consumer. In the first sentence of the subsection, the phrase "applicable fees" is changed to "applicable cost share obligation fees." The term "cost share obligation fees" replaces the term "applicable fees" in the second sentence of the subsection. These changes are proposed for consistency in the rules.

N.J.A.C. 10:140-4.3(g) is proposed for amendment to add, "and each of their employees," to clarify that both parties shall be required to sign time sheets for payment to be issued. The Division is proposing this amendment because it believes dual signatures are a necessary check and balance to ensure the integrity of records. The words "a fiscal intermediary services organization" are proposed as a substitute for the words "county designated agency" to clarify that a fiscal intermediary services organization will assume the role of overseeing payroll that was formerly the role of the county designated agency. The Division is proposing this change as it believes it to be fundamental to the operation of the cash model. Further, the following additional language "bills verifying receipt for services rendered or items purchased shall be submitted to the fiscal intermediary service organization for payment" is proposed to explain the role of the FISO in paying bills for services and items to be paid for under the PASP. The Division believes this additional language is necessary as the FISO and its function are essential to the cash model.

N.J.A.C. 10:140-4.3(h) is proposed for amendment to include the words "cost share obligation" as a replacement for the word "consumer fees" to provide consistent terminology in the rules. The words "the county designated agency" are replaced with the words "the fiscal intermediary service organization" to clarify that the FISO will assume responsibility for collecting cost share under the cash model; a responsibility that formerly belonged to the county designated agency. The text billing of the cost "of personal assistance services" has been proposed for deletion and replaced with the billing of the cost "share obligation" as the term relates to the costs for which a consumer is

responsible. The Division believes that this change terminology is necessary under the cash model program.

N.J.A.C. 10:140-4.3(i) is proposed for amendment to remove the word "fees" and replace it with the words "cost share obligations." Also the words "fiscal intermediary service organization" will replace the words "county designated agency," which has been deleted from the section. The Division is proposing this change to provide consistent terminology within the rules.

The Division is proposing new subsection (j) to indicate how the new Consumer Cost Share Obligation Table will be annually updated to coincide with the annual update to the Federal Poverty Level. This update will be through the publication of a notice of administrative change published in the New Jersey Register, because the Division needs the ability to recalculate cost share at the time of the adjustment. The new cost share obligations are also included as a table to the subsection.

The heading of N.J.A.C. 10:140-4.4 and the text of N.J.A.C. 10:140-4.4(a) is proposed for amendment to add the words "cost share obligation" as a replacement for the word "fees." The Division is proposing this change to provide consistent terminology within the rules. The phrase "increased or decreased," in reference to expenses, are proposed for deletion, as the Division believes it to be redundant and unnecessary. Language has been proposed to explain that expenses that may justify a reduction in cost share must be non-routine in nature and be due to unforeseen emergency circumstances. The Division believes this change to be necessary in order to ensure that cost share reductions are evaluated equitably, and to ensure the financial integrity of the program, which is, in part, dependent on cost share. The Division is further suggesting this change to prohibit the use of normal everyday expenses that are the responsibility of anyone, regardless of a disability, from being used to reduce a consumer's cost share. Expenses to be considered must be directly related to the presence of a disability, and would be determined not to exist if the consumer was not a person with a disability. Text has also been proposed to clearly explain that the items in paragraphs (a)1-7 are the only expenses that shall be considered to reduce cost share, rather than the list being not all inclusive, as in the existing rule.

New language has been proposed to paragraph (a)3 to clarify that eligible adaptations to a consumer's home or vehicle must either promote access or safety. The Division is proposing this addition because it wishes to make a clear distinction between disability modifications (ramps) and items added for other reasons.

Paragraph (a)4 is proposed for deletion as it is obsolete based on other proposed amendments. New paragraph (a)4 is proposed to allow the cost of out-of-pocket attendant services to be considered in reducing cost share. The Division is proposing this new paragraph to acknowledge that consumer's who travel may need to pay privately for personal care beyond their award through the PASP.

New paragraphs (a)5, 6 and 7 are proposed to expand the list of expenses that can be considered in evaluating reductions of cost share. The Division is adding these items because it believes that the additions make the list more comprehensive and provides clarity.

Existing subsection (b) is being proposed for deletion because it allows consideration of routine expenses that are not disability specific. The Division is making this change because the existing text contradicts the proposed amendments to subsection (a).

Recodified subsection (b) is proposed for amendment to explain that the State Program Administrator shall render decisions regarding cost share reductions based on the list of expenses in N.J.A.C. 10:140-4.4(a)1 through 7. Appeals of decisions shall ultimately be vested with the Division Director. The Division is proposing this clarification because the existing rule is silent on this matter and it believes clarity is needed.

The heading of N.J.A.C. 10:140-4.5 is amended to substitute the words "Cost Share Obligation" in place of the word "Fees." This change is being made for consistency in the rules.

The heading of N.J.A.C. 10:140-5.1 is proposed for amendment with the addition of "Domestic Household Employees." This change is proposed to incorporate the IRS designation for personal assistants into the heading of the subchapter.

N.J.A.C. 10:140-5.1(a) is proposed for amendment to remove obsolete text referring to the criteria for personal assistants. New text has been added to clarify that an individual who is younger than the age of 18 may

work as a personal assistant provided that he or she can obtain working papers. N.J.A.C. 10:140-5.1(a)1 through 4, (b) and (c) are proposed for deletion because they are obsolete under the cash model. The Division is making these changes to explain that any individual, who is legally able to work, may become a personal assistant under the cash model, as there are no longer any academic or clinical credential or experience criteria therefor. New 10:140-5.1(b) is proposed to explain that personal assistants paid under the cash model shall be considered "domestic household employees," as defined by the IRS, and shall adhere to all criteria associated with that designation. The Division is proposing this addition for the purposes of clarity and to promote compliance.

N.J.A.C. 10:140-6.1(a) is proposed for amendment to replace "all" eligible consumers with "newly" eligible consumers. Two training courses have been replaced by with one mandatory training course and the title of the mandatory course is proposed to be added to the rule. The Division is proposing the changes to explain the new training requirement under the cash model. Given that existing consumers have been trained in the cash model in anticipation of the program changeover, the requirement covered in the subsection shall only be mandated for newly eligible consumers. Existing consumers may attend a refresher course if they feel it is necessary. The Division also believes that this change will make better use of the limited training resources of the PASP. The word "Division" replaces "designated State agency" to provide consistency in the rules.

N.J.A.C. 10:140-6.1(a)1 is proposed for deletion because the existing content is obsolete under the cash model. New N.J.A.C. 10:140-6.1(a)1 is proposed to explain that training will be available in lecture format or via self-paced formats (online, handout, CD etc). The Division believes this change to be necessary to make the public aware of the alternative training formats that are being offered for the first time by the Division.

Existing N.J.A.C. 10:140-6.1(b) is proposed for deletion as the subsection is obsolete under the new training requirement. A new subsection is proposed to explain that personal assistants may, at the discretion of their employing consumers, attend an optional training course. The Division believes that this change is consistent with the program philosophy of consumer self direction and empowers consumers to determine the needs of their employees.

Existing N.J.A.C. 10:140-6.1(c) is proposed for deletion to remove obsolete language. A new subsection is proposed to explain that no training waivers will be considered. The Division has taken measures to make the training requirements more flexible and available in formats to meet the needs of everyone. Further, the Division believes that each consumer must have training in how to manage their cash allowance and develop their cash management plan. Therefore, it does not believe that waivers of this requirement are appropriate.

N.J.A.C. 10:140-6.1(d) is proposed for grammatical amendments.

N.J.A.C. 10:140-6.1(f) is proposed for amendment to replace the words "county designated agency" with the word "consumer" as it relates to the party who will be responsible providing information on training opportunities to personal assistants. The Division believes that having consumers assume this responsibility is consistent with the philosophy of consumer self-direction. Further, the citations to N.J.A.C. 10:140-6.2(a)2 and (b) are proposed for deletion, as N.J.A.C. 10:140-6.2 is proposed for repeal (see below).

New N.J.A.C. 10:140-6.1(g) is proposed to explain that, under the cash model, consumers may obtain additional or specialized training for assistants whom they employ through the Division's contracted training vendor. The cost of the training shall be the responsibility of the consumer and appear as an item on the cash management plan. The Division believes that some consumers may wish to have their respective employees receive advanced or specialized training in areas that pertain to their specific needs (ventilator management, first aid or CPR, for example). In such cases, the Division's contracted training vendor may facilitate or provide such training. In such cases, the cost of training shall be the responsibility of the consumer and shall be deducted from the consumer cash allowance reflected on the CMP. Consumers may also arrange for training for their assistants through community resources external to PASP and with no association to the program.

New N.J.A.C. 10:140-6.1(h) is proposed to explain the requirement that any new program staff must receive training in the cash model within

45 days of their date of hire. The Division is adding this language because it believes it to be essential that county staff be trained in the cash model to be able to provide assistance to consumers on the program. This requirement is also necessary given staff turnover that exists in some county designated agencies.

Existing N.J.A.C. 10:140-6.2, which pertains to how a personal assistant obtains a waiver of the old training requirement, is proposed for repeal because it is obsolete under the cash model. The training of personal assistants is now done at the discretion of the consumer that is employing them.

Recodified N.J.A.C. 10:140-6.2(a) is proposed for amendment to remove the reasons and circumstances that constituted good cause for consumers that failed to meet the training requirement of the program. The Division believes that it has instituted methods by which everyone can meet the training requirement; these include internet training and other self-paced options. The Division anticipates full compliance and intends to suspend or terminate consumers who do not meet the requirement in accordance with the provisions of the rules. The word "the" (changing "complete required courses" to "complete the required course") has been added to the sentence to correct sentence structure, given that there is now only one training course required under the program.

N.J.A.C. 10:140-6.3(b) proposed for deletion, as it is obsolete under the cash model, as there are no training requirements for personal assistants.

Recodified N.J.A.C. 10:140-6.3(b) is proposed for amendment to change the rate of compensation for personal assistants who attend training from \$9.00 per hour to \$10.00 per hour. The Division believes this is an appropriate rate of compensation to accurately reflect a fair wage and adjustment for the cost of living. New text is proposed to explain that the stipend is limited to the training referenced in N.J.A.C. 10:140-6.1(b) because the Division believes that while it is acceptable to sponsor individuals who wish to obtain basic training in the provision of personal assistance using the program resources; this courtesy cannot extend to advanced or individualized training, in order to maintain the fiscal integrity of the program.

The heading of N.J.A.C. 10:140-7.1 and the text of subsections (a) and (c) are proposed for amendment to replace the term "county designated agency" with the term "fiscal intermediary service organization." The Division is making the change because under the cash model the fiscal intermediary service organization will be assuming the role explained in the rules formerly performed by the county designated agency.

N.J.A.C. 10:140-7.1(b) is proposed for deletion and replacement to explain that under the cash model, background checks on potential employees shall be performed only at the discretion of the consumer who is seeking to hire the individual as a personal assistant. New language has also been proposed to explain that the cost of the background check shall be the responsibility of the consumer and shall be deducted from their cash allowance and be reflected on the CMP. Existing rule text that makes the county designated agency responsible for the background check for all employees has been removed from the rule because it is obsolete under the cash model.

N.J.A.C. 10:140-7.1(d) and (e) are proposed for deletion. The Division believes that they are obsolete under the cash model since the county designated agency will no longer serve its prior functions that have been amended in this notice of proposal.

N.J.A.C. 10:140-7.2(a)6 is proposed for amendment to substitute "a contact person" for the existing "primary contact person." This change is proposed to clarify that the county designated agency is a contact for the program, but consumers may also call the Division or the FISO for assistance.

N.J.A.C. 10:140-7.2(a)7 is proposed for deletion as it is obsolete under the cash model. The county designated agency shall have no role in arranging personal care for consumers of the program. That responsibility shall belong to the consumer.

Existing N.J.A.C. 10:140-7.2(a)10 is proposed for deletion as it is redundant. The Division believes that the content is sufficiently addressed in the recodified paragraph (a)8.

Existing N.J.A.C. 10:140-7.2(a)12 is proposed for deletion as it is obsolete given that the county designated agencies shall have no role

related to consumer timesheets under the cash model. Individual consumers shall assume responsibility of their assistant's time sheets with the oversight of the FISO and the Division.

N.J.A.C. 10:140-7.3(a)5 is proposed for amendment to simplify the language that explains that the Division shall support the Advisory Council by providing staff and equipment. The Division is making this change to clarify a practice that has always, and will continue, to exist.

N.J.A.C. 10:140-7.3(b)1 is proposed for amendment to reduce the Advisory Council from 21 to 19 members, and removes the specification that each county have a representative on the Council. This change is being made to comport with the amended legislation.

New language has been added to N.J.A.C. 10:140-7.3(b)2 to specify that public members shall serve terms that shall expire at the end of each fiscal year or with the election of their successors on a 3-year staggered basis upon the appointment of the Commissioner, and each member shall also be eligible for reappointment. The new appointments under this paragraph are to begin upon adoption of the proposed amendments. New subparagraphs (b)2i-iii explain how the terms of members will be staggered. The Division is proposing this amendment to comply with the amended legislation mandating the number of Council members, and believes that the staggered terms allows the Advisory Council to preserve a sufficient number of the body to assure both continuity and succession in its membership.

New N.J.A.C. 10:140-7.3(b)3 is proposed to explain how the Advisory Council will be made up. Five members will represent each of three regions of New Jersey.

New N.J.A.C. 10:140-7.3(b)4 is proposed to state that three members will represent other program stakeholders.

New N.J.A.C. 10:140-7.3(b)5 is proposed to state that the Commissioner or a designee will serve as a Council member.

Recodified N.J.A.C. 10:140-7.3(b)6 is proposed for amendment to include language that specifies that the Advisory Council must organize within 30 days after the date of appointment, must elect a vice chairperson, as well as a chairperson. The Division is proposing these changes to assure that the Council remains functional and in-service to the program. The Council has always had a vice chairperson in practice, but the position was never specified in the rules; therefore language is being added to correct the oversight.

New N.J.A.C. 10:140-7.3(c) is proposed to explain that while local advisory bodies may form, they will not be mandated nor have any official duties under N.J.A.C. 10:140. The Division is making this change as it feels that each consumer is represented on the Statewide Council, and has a mechanism to discuss issues or to give opinions on program operations. The Division acknowledges that some counties have historically formed local groups and will take no actions to disband them, but it will also not mandate their continued existence. Under the cash model, consumers have enhanced control over the services that they receive and given this shift in control from the Division to the consumer, local advisory bodies may become obsolete.

As the Division 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 Division of Disability Services anticipates that the proposed amendments, repeals and new rule to N.J.A.C. 10:140 will provide a positive social impact on the lives of individuals in New Jersey with permanent physical disabilities. As of December 31, 2010, 630 individuals were being served Statewide under the Personal Assistance Services Program. The Personal Assistance Services Program provides a means by which individuals with physical disabilities can enhance their independence and self-sufficiency through the ability to direct 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 for participation in their community. 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 proposed amendments, repeals and new rule to N.J.A.C. 10:140 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 Division supported through a line item in the Division budget every year. For State Fiscal Year 2011, \$11.1 million from general and casino revenues has been appropriated to administer this program. A maximum of 15 percent of this amount is designated for administrative expenses, per the enabling statute. The economic impact on the target population of 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 them the skills necessary for future economic self-sufficiency. The cost share contributions that are collected from eligible individuals will have a positive impact on the program in that the funds collected will go towards the expansion of services to individuals who otherwise would remain on a waiting list. The Division believes that the new cost share structure will advantage program recipients in that only the income of the individual beneficiary can be considered and therefore, an individual will pay less in cost share in most circumstances.

**Federal Standards Statement**

A Federal standards analysis is not required because the proposed amendments, repeals and new rule 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 proposed amendments, repeals and new rule will result in a greater pool of workers from which to draw since consumers can employ anyone who is legally eligible to work to provide services under the cash model. The cash model makes use of informal caregivers who may be willing to assist an individual with whom they have a relationship, but are unwilling to work professionally for a home care agency. It is believed that the amendments and new rule will have a dual benefit; providing a source of personal care services to individuals who may be disadvantaged when seeking agency services by their location, schedule or complexity of need; and by providing a source of income to individuals who may be unemployed or underemployed as a consequence of being a caregiver.

**Agriculture Industry Impact**

The Division of Disability Services anticipates no impact on the agriculture industry in New Jersey as a result of the proposed amendments, repeals and new rule.

**Regulatory Flexibility Analysis**

The providers under 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 under the program as well. These organizations are small businesses, as that term is defined in N.J.S.A. 52:14B-16 et seq., and for the purposes of the proposed amendments, repeals and new rule are subject to the same reporting, recordkeeping and other compliance requirements as the government entities, as discussed in the Summary above. No capital costs are anticipated to be required as a result of the proposed amendments, repeals and new rule. 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 as a result of the proposed amendments, repeals and new rule.

**Smart Growth Impact**

The proposed amendments, repeals and new rule will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

**Housing Affordability Impact Analysis**

The proposed amendments, repeals and new rule will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average

costs associated with housing because the rules pertain to the Personal Assistance Services Program, which has no effect on housing.

**Smart Growth Development Impact Analysis**

The proposed amendments, repeals and new rule will have an insignificant impact on smart growth 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 the Personal Assistance Services Program, which has no effect on housing.

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

## SUBCHAPTER 1. GENERAL PROVISIONS

## 10:140-1.1 Purpose

(a) Pursuant to the provisions of N.J.S.A. 30:4G-13 et seq., the Department of Human Services provides support to individuals with [chronic] **permanent** physical disabilities in meeting their daily needs for personal care and assistance with activities of daily living in order to live independently within their community. The Personal Assistance Services Program, administered by county designated agencies in each of New Jersey's 21 counties and within the limits of funds appropriated or otherwise made available to it, shall assist self-directed adults with [chronic] **permanent** physical disabilities to:

1.-2. (No change.)

3. **Actively** participate in community-based independent living (**that is, volunteering**).

## 10:140-1.2 Scope

[These] **The rules of this chapter** apply to all activities and persons participating in the Personal Assistance Services Program, including, but not limited to, the designated State contracting agency, applicants, consumers, [personal assistants, and] **their employees**, county agencies administering the program[,] and [subcontracted provider agencies] **vendors providing services**.

## 10:140-1.3 Personal Assistance Consumer Bill of Rights

(a) Each consumer, and, as appropriate, each applicant:

1. (No change.)

2. Shall be served by personal assistants **and/or vendors** who are properly trained and competent to perform their duties;

3.-7. (No change.)

8. Shall be free to fully exercise one's civil and due process rights and to be assisted by a personal assistant **and/or vendor** as appropriate and necessary;

9.-14. (No change.)

## 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:

...

"Assessor" means a person who is employed by the program to conduct eligibility assessments and has a master's of social work degree[, or]; a bachelor's degree and three years of experience in rehabilitation services[, or]; is a registered nurse with a bachelor of science degree in nursing; **or three years experience in home care**.

...

"Cash management plan" or "CMP" means **the document used by the Personal Assistance Services Program, which indicates the monthly cash allowance and details the services and supports required by the consumer in order to meet their personal care needs**.

"Community-based independent living" means self-directed living whereby a consumer is actively participating in community-based activities aside from employment or education, including, but not limited to, [homemaking,] **assistance with parenting tasks**, searching for employment, volunteer **or community** service, participation on governing boards[, and/or serving on committees.

"Consumer" means an individual **who is currently receiving services and who meets the eligibility standards of N.J.A.C. 10:140-2.1**, [or] has received an exception under N.J.A.C. 10:140-2.2 **or the criteria has been set aside by the Commissioner based on an emergent**



circumstance, as determined on a case-by-case basis[, and is receiving services].

“Consumer directed services” means a model of service delivery that affords the opportunity for individuals to control and manage all aspects of the services that they receive including, but not limited to, from whom the services are received, what types of services are received and when, where and how they are received.

“County designated agency” means a county office for the disabled or other agency designated by the county government[, pursuant to N.J.S.A. 30:4G-13 et seq.] to administer in that county the Personal Assistance Services Program established pursuant to N.J.S.A. 30:4G-13 et seq. and this chapter.

“Division” or “DDS” means the Division of Disability Services, in the Department of Human Services.

“Education or training” means enrollment in courses or training programs related to the enhancement of a worker’s employment.

“Fiscal intermediary service organization” or “FISO” means a company or agency that is set up to disburse the cash benefit to consumers under the Personal Assistance Services Program. The latter will serve as the business agent for the consumer and prepare the payroll checks and other disbursements at the direction of the consumer, as well as keep records of all transactions.

“Parenting” means routine child rearing activities performed for a minor child under the age of five in circumstances where those activities are obligated by law and the failure of the parent to perform such activities would constitute neglect under State law.

“Permanent physical disability” means a severe impairment of an ongoing 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.

“Personal assistance service” means [activities of daily living and] health and chore-related tasks performed by a personal assistant. Personal assistance services include, but are not limited to, assistance in essential daily activities, such as bathing, dressing[,] and feeding; assistance with light housekeeping activities, such as laundry, shopping[,] and meal preparation; assistance with paperwork and communication; and assistance with mobility, including driving [and the use of public or para-transportation systems] or other forms of transportation.

“Time sheets” means a [form] legal document that is issued by the [service provider agency] fiscal intermediary service organization and used by the consumer to verify the number of hours received under the program and signed by the consumer’s employee.

“Vendor” means an agency or business that provides a service under the Personal Assistance Services Program, that satisfy the needs and requirements of a consumer, including, but not limited to, a cleaning service and/or a laundry service.

“Volunteering” is the practice of people working on behalf of others or a particular cause without payment for their time and services.

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.-2. (No change.)

3. Actively participating in community-based independent living (that is, volunteering).

i. A consumer shall volunteer for a minimum of 20 hours a month and provide supporting documentation upon request of the program.

ii. Existing consumers must meet this requirement by (30 days of the effective date of this amendment). The Division shall impose a 90-day look-back period to verify both the longevity and sustainability of the volunteer activity.

[(c) The county designated agency shall provide needed services to eligible consumers within the limits of the Division appropriations and subject to the availability of personal assistants.]

(c) All consumers shall provide the Division with verifiable documentation of their respective qualifying program activity as set forth in (b)1 through 3 above. Failure to provide documentation shall render the individual to be ineligible for continued services under the program.

(d) The following activities shall not be considered as qualifying program activity under the PASP:

1. Participation in an avocation or hobby;
2. Parenting or child rearing activities not covered by N.J.A.C. 10:140-4.1; and
3. Homemaking.

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 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 [65] 70 and shall have a [chronic] permanent physical disability;

2. An eligible applicant or consumer shall be a resident of the State of New Jersey[,] and must reside within the geographic boundaries thereof in order to qualify for services. Residency shall be determined by physical domicile in New Jersey.

3.-4. (No change.)

5. A relative or other informal caregiver [shall] is not [be] available to provide the services that the [eligible applicant or] consumer needs;

6. An eligible applicant or consumer shall live, or plan to live upon becoming eligible, in a private house or apartment, group home, educational facility (for example, dormitory or campus apartment), rooming or boarding house, residential health care facility[,] or an alternative housing arrangement acceptable to the [county designated agency] Division for the purposes of the Personal Assistance Services Program; and the personal assistance services that the eligible applicant or consumer receives are supplemental to, and not duplicative of, services provided to the person in the rooming or boarding house, group home, educational facility, transitional housing or residential health care facility pursuant to licensure requirements[.]. Individuals who reside in, or are a patient in a facility or setting where personal care services are the responsibility of those entities shall be ineligible for the Personal Assistance Services Program. An exception to this paragraph may be granted by the Division Director in circumstances where personal care services are not being provided by the facility and the individual meets all other requirements of this chapter;

7. The attending physician for the eligible applicant or consumer shall confirm in writing that he or she has a [chronic] permanent physical disability [and requires no assistance in the coordination of therapeutic regimes] and is capable of self-direction, and that the personal assistance services will be appropriate to meet the eligible applicant or consumer’s needs; and

8. The eligible applicant or consumer shall [utilize] receive no more than 40 hours per week of personal assistance services from the program in combination with any other program. Exceptions to this paragraph may be granted by the Division Director to individuals who can demonstrate the need for additional hours and demonstrate that the absence or loss of the services would constitute a clear risk to health and safety.

(b) Consumers must utilize any Federally funded programs for which they are entitled before receiving services from the program.

(c) The Division must operate the Personal Assistance Services Program within its financial appropriation and may suspend the enrollment of consumers or truncate the hours provided to consumers as financial restrictions/limitations require.

(d) In circumstances where requests for services exceed program resources, the Division shall invoke an order of selection to prioritize the order in which resources will be used to provide services to

existing consumers. The order of selection shall be based on the qualifying program activities set forth at N.J.A.C. 10:140-1.5(b).

(e) Services available under the program are limited to those services related to personal care. The Division has no obligation to fund or facilitate a consumer's ability to comply with program rules by providing other services or accommodations.

(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. Maintaining qualifying activity in accordance with this chapter;
2. Complying with the payment of cost share in accordance with N.J.A.C. 10:140-4.3; and
3. Complying with the training requirements in accordance with N.J.A.C. 10:140-6.1.

10:140-2.2 Exceptions to eligibility standards

(a) Exceptions to the eligibility standards in N.J.A.C. 10:140-2.1(a)1, [5] 6 and 8 [above] may be granted as follows:

- 1.-3. (No change.)
- (b)-(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 [65] 70:
  - 1.-3. (No change.)
  - (e) (No change.)

(f) No individual may receive more than one exception to the program's age criteria set forth in N.J.A.C. 10:140-2.1(a)1.

10:140-2.3 Procedures for requesting and granting exceptions to eligibility standards

(a) Eligible applicants or consumers requesting exceptions shall adhere to the following procedures:

1. (No change.)
2. The written request for an exception shall be made to the [director of the county designated agency] **Division** and shall indicate the specific exception requested and provide justification; and
3. (No change.)

(b) The [director of the county designated agency] **Division** shall review the request and make a written recommendation to the State Program Administrator. The State Program Administrator shall make a determination and inform the county designated agency of the results within 30 days from the date that the request was received by the [county designated agency] **Division**.

### SUBCHAPTER 3. SCREENING, SERVICES AND APPEALS

10:140-3.1 Screening

(a) Upon applicant inquiry to the county designated agency regarding the Personal Assistance Services Program, county designated agency staff shall [elicit] **obtain** information necessary to conduct pre-application screening and shall complete the screening within five working days of applicant inquiry.

(b) (No change.)

(c) In the event the applicant appears to be eligible as a result of the screening, and Personal Assistance Services Program funding in the county designated agency is not presently available to provide services to the applicant, the applicant's name shall be placed on the waiting list maintained by the [county designated agency] **Division**. The social and financial assessments, under N.J.A.C. 10:140-3.2, shall not be conducted at this time. Staff from the county designated agency shall inform the applicant in writing of this determination and advise the applicant that the documents necessary to process the application will be forwarded to the applicant when funding is available as determined by the [county designated agency] **Division**. The social and financial assessments will be performed following completion of the application documents by the applicant. The position of the applicant's name on the [county designated agency's] waiting list shall be determined by the [county designated agency] **Division** in accordance with the service priorities established under N.J.A.C. 10:140-1.5(b).

10:140-3.2 Assessment

(a) [A member of the staff of the county designated agency shall perform an assessment within 30 days upon notification from the

applicant to the] **The county designated agency [of completion] shall arrange for a qualified assessor to perform an assessment within 30 days upon receipt** of the application package, which includes the following:

- 1.-3. (No change.)
4. [A] **An Initial Consumer Plan of Service.**
  - (b) Within 30 days of notification from the applicant of the completion of the application package, [the county designated] **a qualified assessor, under (a) above**, shall perform a social assessment of the applicant to determine if the applicant meets the eligibility criteria **and to further determine the needs of the consumer.**
  - (c) (No change.)

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

(a) The individual personal assistance services plan shall be designed by the consumer **in consultation with the county designated agency** to meet his or her [specific] **individualized** needs for personal assistance services [and negotiated and approved by the consumer and the county designated agency].

(b) A personal assistance services plan shall include [both of] the following:

1. A list of the personal assistance services to be provided; [and]
2. An estimate of the time needed and frequency of personal assistance services[.];
3. **A list of individuals and/or vendors who will provide the services denoted in (b)1 above; and**
4. **An assessment of any cost share for which the consumer is to be responsible.**

[c] The consumer and the county designated agency shall review the plan within 90 days after start-up of services and revise the plan upon request of the consumer or the county designated agency.]

(c) **The individual personal assistance services plan shall serve as the template for the creation of a consumer's cash management plan. The CMP shall serve as a budgetary document to show how a consumer's monthly cash allowance shall be utilized to meet the consumer's needs. A CMP must include at least:**

1. **The monthly cost and frequency of each service listed in (b)1 above;**
2. **The rate of pay that each individual or vendor named in (b)3 above; and**
3. **Other expenses that are mandated by the program as defined in N.J.A.C. 10:140-4.3(d) and 6.1(g).**

(d) The county designated agency shall [perform] **ensure that** a social and financial reassessment **is completed** at 12-month intervals, **or as often as necessary**, commencing with the date of [eligibility] **acceptance to the program**. The social and financial reassessment shall be completed as follows:

1. The social reassessment shall be completed to determine if the consumer continues to meet the eligibility criteria pursuant to N.J.A.C. 10:140-2.1; **and**
2. The financial reassessment shall be completed to determine if the consumer is liable for cost share responsibilities, pursuant to N.J.A.C. 10:140-4.3; **and**].

[3. Within 30 days of the date of the completed social and financial reassessments, the consumer's plan of service and liability for cost share responsibilities shall be reviewed by the staff of the county designated agency and, if necessary, revised.]

(e) The consumer shall use no more than [the number of hours, in a given week,] **the monthly cash allowance** authorized by the county designated agency under the approved [plan of services] **cash management plan** pursuant to (a) and (b) above. [Program service hours] **Cash allowance** awarded to a consumer that [are] **remains unused after the end of the calendar 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) Adjustments to **increase** the [consumer plan of service] **consumer's cash allowance** shall be considered upon the request of the consumer, or shall be initiated upon the authorization of the county

designated agency, subject to the availability of funding within the county designated agency.

**(g) A consumer shall have only one active CMP at a time, but may revise their CMP monthly to adjust for changing needs.**

**(h) Cash management plans shall be developed by the consumer in consultation with the county designated agency, but shall not be considered to be active until approved by the State Program Administrator pursuant to (b) and (c) above.**

#### 10:140-3.4 Disposition of application

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

(c) In the event an applicant is determined eligible for the Personal Assistance Services Program and funding prohibits the start-up of services within 30 days from the date of the county designated agency notification to the applicant, pursuant to (a) and (b) above regarding the results of the social and financial assessments performed, such applicant shall be placed on a waiting list for services. An applicant's position on a waiting list shall be determined by the [county designated agency] **Division** in accordance with N.J.A.C. 10:140-1.5(b).

#### 10:140-3.5 Services

(a) (No change.)

(b) For the purposes of the Personal Assistance Services Program, the following service standards shall be met:

1. Program funds shall not be used for [medically related] **skilled professional medical services**, including the supervision of registered nurses. It is not the responsibility of the Personal Assistance Services Program to arrange for or provide skilled nursing, therapy[,] or related medical care and treatment services [which] **that** the eligible consumer may need[.];

[2. Using a personal assistant as a personal driver may be allowed. In no instance shall any person serving as a personal assistant under the Personal Assistant Services Program provide transportation services using his or her own vehicle. In addition, written verification shall be provided to the county designated agency indicating that the personal assistant is a fully covered driver under the eligible consumer's motor vehicle policy. The verification of insurance coverage as described above shall be updated with the county designated agency every 12 months, at a minimum. Failure to comply with this requirement shall result in suspension or termination of driving or transportation services, as determined by the county designated agency based on the efforts and willingness of the consumer to provide the required verification.]

[3.] **2.** Personal assistance services provided for the purpose of receiving training or education shall not replace or duplicate those services provided by an educational institution as mandated by Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794[.]; **and**

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

(c) (No change.)

[d] Personal assistance services received by an eligible consumer, and paid for by funds under the Personal Assistance Services Program, shall be provided by a non-relative who is employed as a personal assistant under the program.]

#### 10:140-3.6 Exceptions to service standards

(a) Exceptions to the service standards in N.J.A.C. 10:140-3.5(a), [(b)3 and (b)4] **(b)2 and 3** shall be:

1. (No change.)

2. Reviewed on a case-by-case basis by the [county designated agency] **Division**; and

[3. Determined by the county designated agency. Upon making the final determination on exception requests, the county designated agency shall provide written notification of the results to the State Program Administrator.]

**3. Consumers have the right to appeal decisions regarding denials of the exception to the service standards. Appeals shall be challenges to the material facts of the case, and shall be made to the Division Director or designee, who shall be the ultimate authority to render a decision.**

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

#### 10:140-3.7 Procedures for requesting and granting exceptions to service standards

(a) Eligible applicants or consumers requesting exceptions shall follow the procedures listed below:

1. Requests for exceptions to N.J.A.C. 10:140-3.5(a) through (d) shall be made in writing[.]; **and**

2. The written request for an exception shall be made to the [director of the county designated agency] **Division** and shall indicate the specific exception requested and provide justification.

(b) The [director of the county designated agency] **Division** shall review the request and respond to the request within 30 days.

[(c) If the request is for an exception to N.J.A.C. 10:140-3.5(c) and the situation is an emergency, this request may be made verbally and the response of the director of the county designated agency shall be immediate.

(d) If the request is for an exception under N.J.A.C. 10:140-3.5(c) and not an emergency, or under N.J.A.C. 10:140-3.5(d), the director of the county designated agency shall forward his or her recommendation to the State Program Administrator, who shall review the request and respond to the request within 30 days.]

#### 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[, in writing, or, where appropriate, verbally or through alternate communication methods, the director of the county designated agency of both] the county of origin and the destination county[,] of his or her intention to move. [Upon receipt of the notification, the destination county shall make a determination as to whether funding is available to provide services, and provide the consumer with the results of that determination in writing.] **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. (No change.)

[(c) In the event an eligible consumer moves to another county and wants to retain his or her personal assistance services, and the destination county has determined that there are insufficient funds, the county of origin will continue to pay for those services for a transitional period of no more than six months.

(d) If it has been determined by the destination county that there are insufficient funds, the eligible consumer shall immediately be placed on the destination county's waiting list in accordance with the priorities set forth in N.J.A.C. 10:140-1.5(b).

(e) Following the transition period pursuant to (c) above, the eligible consumer shall be granted services from the destination county in accordance with his or her position on the waiting list in (d) above.]

#### 10:140-3.9 Suspension of service and termination of service

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

(e) Involuntary suspensions or terminations shall be a result of non-compliance with program [regulations] **rules** and procedures, which include, but are not limited to:

1.-8. (No change.)

(f) (No change.)

#### 10:140-3.11 Hearings and appeals

(a) Administrative hearings under this chapter shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

1. (No change.)

**2. A consumer who has maxed out his or her eligibility for service under N.J.A.C. 10:140-2.1(a)1 or 8 shall not be eligible for a fair hearing, unless the consumer raises a challenge to a material fact.**

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

(b)-(g) (No change.)

SUBCHAPTER 4. [CONTRACTING] INDIVIDUAL BUDGETS AND FEES

[10:140-4.1 Contracting for services

(a) The county designated agency shall either:

1. Contract with other service providers, including, but not limited to, private individuals, for the provision of personal assistance services; or
2. Employ individuals as personal assistants where appropriate and develop employment policies consistent with N.J.A.C. 10:140-5 for individuals working as personal assistants.]

**10:140-4.1 Contracting for services**

(a) **The consumer shall either:**

1. **Employ private individuals who are legally determined eligible to work as defined by the Internal Revenue Service (IRS) at I.R.C. § 31.3306(c)(2)-1(a)(2); or**
2. **Utilize the services of a vendor agency that can legally do business in the State of New Jersey.**

10:140-4.2 [Provider fees] Fees and individual budgets

(a) Fees for services under the Personal Assistance Services Program shall be based on an hourly rate [to be paid to the contracting service provider agency or contracting individual personal assistant for each hour of personal assistance service provided under this program. The fees for each hour of personal assistance service authorized by the county designated agency shall be paid to the contracting service provider agency or individual personal assistant.] **determined by the consumer's cash management plan, which is established based upon the consumer's authorized plan of service hours. This number is then converted into a monthly dollar amount based on the flat rate as set forth in (b) below. Any additional costs that exceed that flat fee, shall be the financial responsibility of the county designated agency and not the Division.**

(b) The reimbursement for personal assistance services shall not exceed **[\$13.26] a flat all-inclusive amount of \$15.00** per hour [on weekdays and \$15.30 per hour on weekends and holidays].

(c) (No change.)

(d) The fees for [reimbursement of] personal assistance services and assessments described in (b) and (c) above shall be reviewed by the

Advisory Council every two years, **or as needed, and recommendations made to the Division for adjustments.**

10:140-4.3 Consumer cost share obligation fees and requirements

(a) The consumer fee for personal assistance services shall be based on the ability of the consumer and/or the consumer's spouse to pay for these services. The consumer fee shall apply only to a consumer and that consumer's spouse whose combined annual gross income exceeds the State's applicable income eligibility limit for social services established pursuant to the Social Services Block Grant Act (P.L. 97-35, 42 U.S.C. §§ 1397 et seq.) and set forth at (d) below.]

**(a) A consumer's cost share obligation for personal assistance services shall only be determined by the gross annual income of the consumer. A consumer will have the responsibility for a cost share obligation only if that consumer's individual annual gross income exceeds the applicable eligibility limit of 350 percent of the Federal Poverty Level (FPL).**

**1. A consumer whose annual gross income is less than 350 percent of the FPL, for his or her family size, shall not be required to pay a cost share for personal assistance services.**

(b) Failure of the consumer to pay the appropriate [consumer fee] **cost share obligation** within 60 days of the date of billing [pursuant to the consumer sliding fee scale at (d) below], without good cause, shall be grounds for termination or suspension from the Personal Assistance Services Program.

(c) The [consumer sliding fee scale schedule at (d) below] **Consumer Cost Share Obligation Table (set forth in the table in (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** shall be applied to eligible consumers. For the purposes of assessing consumer fees under [this scale] **the Consumer Cost Share Obligation Table set forth in (j) below**, the county designated agency shall calculate family size and **the consumer's individual** annual gross income pursuant to the [Social Services Block Grant Act (P.L. 97-35, 42 U.S.C. §§ 1397 et seq.)]. The percentage column indicated on the fee scale denotes the percentage of the total cost of the service to be paid by the consumer.] **FPL at 350 percent.**

(d) The consumer sliding fee scale is as follows:

CONSUMER SLIDING FEE SCALE

Single (One Person)	Family (Size 2)	Family (Size 3)	Family (Size 4)	Family (Size 5)	Percentage
0-15,162	0-19,827	0-24,493	0-29,158	0-33,823	0%
15,163-19,663	19,828-23,828	24,494-29,494	29,159-33,659	33,824-37,824	1%
19,664-24,164	23,829-27,829	29,495-34,495	33,660-38,160	37,825-41,825	2%
24,165-28,665	27,830-31,830	34,496-38,496	38,161-42,661	41,826-45,826	3%
28,666-31,666	31,831-35,831	38,497-42,497	42,662-47,162	45,827-48,827	4%
31,667-34,667	35,832-39,832	42,498-45,498	47,163-50,163	48,828-51,828	5%
34,668-37,168	39,833-42,833	45,499-48,499	50,164-53,164	51,829-54,829	6%
37,169-39,669	42,834-45,834	48,500-50,500	53,165-55,165	54,830-56,830	7%
39,670-41,670	45,835-47,835	50,501-52,501	55,166-57,166	56,831-58,831	8%
41,671-43,671	47,836-49,836	52,502-54,002	57,167-58,667	58,832-60,832	9%
43,672-45,172	49,837-50,837	54,003-55,503	58,668-60,168	60,833-62,333	10%
45,173-46,673	50,838-51,838	55,504-56,504	60,169-61,169	62,334-63,834	11%
46,674-47,674	51,839-52,839	56,505-57,505	61,170-62,170	63,835-64,835	12%
47,675-48,675	52,840-53,840	57,506-58,506	62,171-63,171	64,836-65,836	13%
48,676-49,426	53,841-54,841	58,507-59,257	63,172-64,172	65,837-66,837	14%
49,427-50,177	54,842-55,842	59,258-60,008	64,173-65,173	66,838-67,838	15%
50,178-50,928	55,843-56,843	60,009-60,759	65,174-66,174	67,839-68,839	16%
50,929-51,679	56,844-57,844	60,760-61,510	66,175-67,175	68,840-69,840	17%

**PROPOSALS**

**HUMAN SERVICES**

51,680-52,430	57,845-58,595	61,511-62,261	67,176-68,176	69,841-70,841	18%
52,431-53,181	58,596-59,346	62,262-63,012	68,177-68,927	70,842-71,842	19%
53,182-53,983	59,347-60,097	63,013-63,763	68,928-69,678	71,843-72,593	20%
53,933-54,683	60,098-60,848	63,764-64,514	66,679-70,429	72,594-73,344	21%
54,684-55,434	60,849-61,599	64,515-65,265	70,430-70,930	73,345-74,095	22%
55,435-56,185	61,600-62,350	65,266-65,766	70,931-71,431	74,096-74,846	23%
56,186-56,686	62,351-63,101	65,767-66,267	71,432-71,932	74,847-75,597	24%
56,687-57,187	63,102-63,852	66,268-66,768	71,933-72,433	75,598-76,098	25%
57,188-57,688	63,853-64,603	66,769-67,269	72,434-72,934	76,099-76,599	26%
57,689-58,189	64,604-65,354	67,270-67,770	72,935-73,435	76,600-77,100	27%
58,190-58,690	65,355-65,855	67,771-68,271	73,436-73,936	77,101-77,601	28%
58,691-59,191	65,856-66,356	68,272-68,772	73,937-74,437	77,602-78,102	29%
59,192-59,692	66,357-66,857	68,773-69,273	74,438-74,938	78,103-78,603	30%
59,693-60,193	66,858-67,358	69,274-69,774	74,939-75,439	78,604-79,104	31%
60,194-60,694	67,359-67,859	69,775-70,275	75,440-75,940	79,105-79,605	32%
60,695-61,195	67,860-68,360	70,276-70,776	75,941-76,441	79,606-80,106	33%
61,196-61,696	68,361-68,861	70,777-71,277	76,442-76,942	80,107-80,607	34%
61,697-62,197	68,862-69,362	71,278-71,778	76,943-77,443	80,608-81,108	35%
62,198-62,698	69,363-69,863	71,779-72,279	77,444-77,944	81,109-81,609	36%
62,699-63,199	69,864-70,364	72,280-72,780	77,945-78,445	81,610-82,110	37%
63,200-63,700	70,365-70,865	72,781-73,281	78,446-78,946	82,111-82,611	38%
63,701-64,201	70,866-71,366	73,282-73,782	78,947-79,447	82,612-83,112	39%
64,202-64,702	71,367-71,867	73,783-74,283	79,448-79,948	83,113-83,613	40%
64,703-65,203	71,868-72,368	74,284-74,784	79,949-80,449	83,614-84,114	41%
65,204-65,704	72,369-72,869	74,785-75,285	80,450-80,950	84,115-84,615	42%
65,705-66,205	72,870-73,370	75,286-75,786	80,951-81,451	84,616-85,116	43%
66,206-66,706	73,371-73,871	75,787-76,287	81,452-81,952	85,117-85,617	44%
66,707-67,207	73,872-74,372	76,288-76,788	81,953-82,453	85,618-86,118	45%
67,208-67,708	74,373-74,873	76,789-77,289	82,454-82,954	86,119-86,619	46%
67,709-68,209	74,874-75,374	77,290-77,790	82,955-83,455	86,620-87,120	47%
68,210-68,710	75,375-75,875	77,791-78,291	83,456-83,956	87,121-87,621	48%
68,711-69,211	75,876-76,376	78,292-78,792	83,957-84,457	87,622-88,122	49%
69,212-69,712	76,377-76,877	78,793-79,293	84,458-84,958	88,123-88,623	50%
69,713-70,213	76,878-77,378	79,294-79,794	84,959-85,459	88,624-89,124	51%
70,124-70,714	77,379-77,879	79,795-80,295	85,460-85,960	89,125-89,625	52%
70,715-71,215	77,880-78,380	80,296-80,796	85,961-86,461	89,626-90,126	53%
71,216-71,716	78,381-78,881	80,797-81,297	86,462-86,962	90,127-90,627	54%
71,717-72,217	78,882-79,382	81,298-81,798	86,963-87,463	90,628-91,128	55%
72,218-72,718	79,383-79,633	81,799-82,299	87,464-87,964	91,129-91,629	56%
72,719-73,219	79,634-79,884	82,300-82,800	87,965-88,465	91,630-92,130	57%
73,220-73,720	79,885-80,135	82,801-83,301	88,466-88,966	92,131-92,631	58%
73,721-74,221	80,136-80,386	83,302-83,802	88,967-89,467	92,632-93,132	59%
74,222-74,722	80,387-80,637	83,803-84,303	89,468-89,968	93,133-93,633	60%
74,723-75,223	80,638-80,888	84,304-84,804	89,969-90,469	93,634-94,134	61%
75,224-75,724	80,889-81,139	84,805-85,305	90,470-90,970	94,135-94,635	62%
75,725-76,225	81,140-81,390	85,306-85,806	90,971-91,221	94,636-95,136	63%
76,226-76,726	81,391-81,641	85,807-86,307	91,222-91,472	95,137-95,637	64%
76,727-77,227	81,642-81,892	86,308-86,808	91,473-91,723	95,638-96,138	65%
77,228-77,728	81,893-82,143	86,809-87,309	91,724-91,974	96,139-96,639	66%

HUMAN SERVICES

PROPOSALS

77,729-77,979	82,144-82,394	87,310-87,560	91,975-92,225	96,640-97,140	67%
77,980-78,230	82,395-82,645	87,561-87,811	92,226-92,476	97,141-97,641	68%
78,231-78,481	82,646-82,896	87,812-88,062	92,477-92,727	97,642-98,142	69%
78,482-78,732	82,897-83,147	88,063-88,313	92,728-92,978	98,143-98,393	70%
78,733-78,983	83,148-83,398	88,314-88,564	92,979-93,229	98,394-98,644	71%
78,984-79,234	83,399-83,649	88,565-88,815	93,230-93,480	98,645-98,895	72%
79,235-79,485	83,650-83,900	88,816-89,066	93,481-93,731	98,896-99,146	73%
79,486-79,736	83,901-84,151	89,067-89,317	93,732-93,982	99,147-99,397	74%
79,737-79,987	84,152-84,402	89,318-89,568	93,983-94,233	99,398-99,648	75%
79,988-80,238	84,403-84,653	89,569-89,819	94,234-94,484	99,649-99,899	76%
80,239-80,489	84,654-84,904	89,820-90,070	94,485-94,735	99,900-100,150	77%
80,490-80,740	84,905-85,155	90,071-90,321	94,736-94,986	100,151-100,401	78%
80,741-80,991	85,156-85,406	90,322-90,572	94,987-95,237	100,402-100,652	79%
80,992-81,242	85,407-85,657	90,573-90,823	95,238-95,488	100,653-100,903	80%
81,243-81,493	85,658-85,908	90,824-91,074	95,489-95,739	100,904-101,154	81%
81,494-81,744	85,909-86,159	91,075-91,325	95,740-95,990	101,155-101,405	82%
81,745-81,995	86,160-86,410	91,326-91,576	95,991-96,241	101,406-101,656	83%
81,996-82,246	86,411-86,661	91,577-91,827	96,242-96,492	101,657-101,907	84%
82,247-82,497	86,662-86,912	91,828-92,078	96,493-96,743	101,908-102,158	85%
82,498-82,748	86,913-87,163	92,079-92,329	96,744-96,994	102,159-102,409	86%
82,749-82,999	87,164-87,414	92,330-92,580	96,995-97,245	102,410-102,660	87%
83,000-83,250	87,415-87,665	92,581-92,831	97,246-97,496	102,661-102,911	88%
83,251-83,501	87,666-87,916	92,832-93,082	97,497-97,747	102,912-103,162	89%
83,502-83,752	87,917-88,167	93,083-93,333	97,748-97,998	103,163-103,413	90%
83,753-84,003	88,168-88,418	93,334-93,584	97,999-98,249	102,414-103,664	91%
84,004-84,254	88,419-88,669	93,585-93,835	98,250-98,500	103,655-103,915	92%
84,255-84,505	88,670-88,920	93,836-94,086	98,501-98,751	103,916-104,166	93%
84,566-84,756	88,921-89,171	94,087-94,337	98,752-99,002	104,167-104,417	94%
84,757-85,007	89,172-89,422	94,338-94,588	99,003-99,253	104,418-104,668	95%
85,008-85,258	89,423-89,673	94,589-94,839	99,254-99,504	104,669-104,919	96%
85,259-85,509	89,674-89,924	94,840-95,090	99,505-99,755	104,920-105,170	97%
85,510-85,760	89,925-90,175	95,091-95,341	99,756-100,006	105,171-105,421	98%
85,761-86,011	90,176-90,426	95,342-95,592	100,007-100,257	105,422-105,672	99%
86,012-86,262	90,427-90,677	95,593-95,843	100,258-100,508	105,673-105,923	100% <sup>6</sup>

(d) Each consumer shall have a current Worker’s Compensation liability policy, which covers an employee’s work-related personal injury claims prior to the direct employment of a domestic household employee under the program. This policy shall be paid for by the consumer.

(e) Each consumer [and that consumer’s spouse] shall provide verification of annual gross [family] 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 [applicable] the cost share obligation fees shall be made by the county designated agency and redetermined every 12 months.

1. (No change.)

(f) (No change.)

(g) The consumer receiving personal assistance services and each of their employees shall sign time sheets attesting to the hours of service rendered, and the individual personal assistant or provider agency shall then be paid by [the county designated agency.] a fiscal intermediary service organization. Bills verifying receipt for services rendered or items purchased shall be submitted to the fiscal intermediary service organization for payment.

(h) Upon determination of the applicable [consumer fees] cost share obligation pursuant to [this section, the county designated agency] the table in (j) below, the fiscal intermediary service organization shall provide the consumer with a billing of the cost [of personal assistance services] share obligation to be paid by the consumer on a monthly basis.

(i) All collected consumer [fees] cost share obligations shall be retained by the [county designated agency] fiscal intermediary service organization for the provision of personal assistance services.

(j) The table below shall be updated annually in accordance with the change in the FPL as published by the U.S. Department of Labor. The amounts of the cost share obligations will be revised annually by a notice of administrative change published in the New Jersey Register; however, any change in the “income increment” or in the applicable percentage of the cost share obligation as listed in the table below shall be promulgated through rulemaking pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(Agency Note: The proposed new table follows without boldface symbolizing new text; those portions of the table appearing in boldface are proposed to be so permanently.)

Consumer Cost Share Obligation Table

Table with 10 columns representing Federal Poverty Level (Family Size 1-10) and 10 rows representing Income Increment (0% to 100%). Each cell contains a range of values for starting and ending amounts and percentages.

10:140-4.4 Standards for adjustments in consumer [fees] **cost share obligation**

(a) Adjustments in consumer [fees] **cost share obligation** shall be based on verifiable [increased or decreased] expenses [which] **that** result from the consumer's disability [which may include, but are not limited to, items such as:] **that are non-routine in nature and are due to unforeseen and emergent circumstances. Items that can be considered for reduction of cost share shall be limited to:**

1.-2. (No change.)

3. Adaptations to home or vehicle that **promote access or safety** and are related to the consumer's disability; [or

4. Unreimbursed or reimbursable additional hours of personal assistance services over and above those authorized to the consumer by this program, if certified as necessary by the county designated agency and if paid for by the consumer out of pocket.]

**4. Expenses paid by the consumer for personal care services that are beyond the services provided by the program, but meet the definition of personal care services utilized by the program;**

**5. Adaptive or assistive technology to compensate for a disability;**

**6. Expenses related to the care of a certified service animal; or**

**7. Unreimbursed costs related to the repair of a mobility device or adaptive equipment.**

[(b) Adjustments in consumer fees may also be considered when the following verifiable expenses are increased or decreased:

1. College tuition;

2. Alimony/child support; or

3. Emergency home repair expenses.]

[(c)] **(b)** Adjustments in [consumer fees] **cost share obligations** shall be re-evaluated annually or more frequently if necessary in order to redetermine the eligible consumer's ability to pay for services. **Reductions in cost share shall be at the discretion of the State Program Administrator based on the list of expenses in (a)1 through 7 above. Appeals of denials of cost share reduction shall be made to the Division Director, who shall render a final decision.**

10:140-4.5 Procedures for requesting adjustments in consumer [fees] **cost share obligation**

(a)-(g) (No change.)

SUBCHAPTER 5. PERSONAL ASSISTANTS

10:140-5.1 Requirements for personal assistants/**domestic household employees**

(a) All persons desiring to serve as personal assistants under the Personal Assistance Services Program shall be at least 18 years of age [and shall meet at least one of the following requirements:] **or of age to obtain working papers.**

[1. The personal assistant shall complete an approved training course authorized by the State Board of Nursing as a homemaker/home health aide, or a long-term facility nurse aide course authorized by the Department of Health;

2. The personal assistant shall complete a certified training program in a hospital, rehabilitation facility, or a long-term care facility as an aide or personal assistant;

3. The personal assistant shall complete a training course offered by the designated State agency for personal assistants, pursuant to requirements under N.J.A.C. 10:140-6-1; or

4. The personal assistant shall have at least one year of experience in the provision of personal assistance services for adults.

(b) Personal assistants who have met the requirements for employment as a personal assistant under (a)1, 2, or 4 above shall be required to complete additional training requirements as described under N.J.A.C. 10:140-6.1.

(c) Each personal assistant shall have a current liability policy which covers personal injury and/or property damage, prior to employment as a personal assistant under this program. This liability policy shall be paid for by the personal assistant, when he or she is under an independent vendor contract with the county designated agency, or by the provider agency, when the personal assistant is an agency employee.]

**(b) Personal assistants are considered to be domestic household employees as defined by the Internal Revenue Service at I.R.C. § 31.3306(c)(2)-1(a)(2), and shall adhere to all criteria associated with that designation.**

SUBCHAPTER 6. CONSUMER INFORMATION AND PERSONAL ASSISTANT TRAINING

10:140-6.1 Training requirements

(a) [All] **Newly** eligible consumers under the Personal Assistance Services Program shall complete [two] **one mandatory** training course[s] **entitled Orientation to Cash Model** to be offered by the designated training agency, under contract with the [designated State agency, as follows:] **Division. Consumers who have been previously trained may attend a refresher course as they deem it to be necessary.**

[1. One course on the Orientation and Philosophy of the Personal Assistance Services Program, and one additional course of their choice, after consultation with the county designated agency.

(b) All personal assistants shall complete two training courses offered by the designated training agency, under contract with the designated State agency: Orientation and Philosophy of the Personal Assistance Services Program, and Basic Techniques of Personal Assistance Services.

(c) Consumers and personal assistants may complete required training courses as described in (a) and (b) above, in any order of choice.]

**1. Training will be available in lecture format and in self-paced format.**

**(b) All personal assistants may attend the Basic Techniques of Personal Assistance Course when offered, but only at the discretion of the consumer for whom they are employed.**

**(c) Training as set forth in (a) above shall be mandatory and no waivers of the requirement shall be considered.**

(d) Consumer requests to receive in-home training sessions on the required training course[s] shall be considered on a case-by-case basis.

(e) (No change.)

(f) The [county designated agency] **consumer** shall provide or ensure the provision of necessary information on personal assistants to the designated training agency to enable compliance with (b) above. Such information shall be furnished upon request by the designated training agency, as approved by the State Program Administrator, and shall include, but is not limited to, names, addresses and telephone numbers of personal assistants, and as appropriate, written requests for a waiver of the Basic Techniques of Personal Assistance Services course[, pursuant to N.J.A.C. 10:140-6.2(a)2 and (b)].

**(g) Consumers may request that the training vendor provide advanced or disability/task-specific training for their assistants, the cost of which will be the responsibility of the consumer and shall be deducted as an expense on the consumer's CMP.**

**(h) Newly hired staff of the county designated agency shall obtain training in the cash model within 45 days of their date of hire.**

[10:140-6.2 Waivers to training requirements for personal assistants

(a) Waivers to mandated training requirements for personal assistants, as described in N.J.A.C. 10:140-6.1(a) and (b), are as follows:

1. Waiver requests for the Orientation and Philosophy of the Personal Assistance Services Program course shall not be accepted.

2. Waiver requests for Basic Techniques of Personal Assistance Services may be granted for personal assistants on a case-by-case basis. Documentation of prior training or education comparable to Basic Techniques of Personal Assistance Services shall be provided, in order for a waiver to be granted. This training or education shall have been completed within five years of the date of the waiver request made by the personal assistant.

(b) Personal assistants requesting a waiver under (a)2 above shall follow all of the procedures listed below:

1. Requests for a waiver shall be made in writing;

2. The written request for a waiver shall be made to the county designated agency, and shall indicate the specific waiver request and provide verification of completed training or education as required in (a)2 above; and

3. The county designated agency shall review the request and make a determination on the waiver request within 30 days of the receipt of the



request. The county designated agency shall notify the State Program Administrator of this determination in writing.]

10:140-[6.3]6.2 Penalties for noncompliance with training requirements

(a) Consumers who fail to complete the required course[s] without good cause, which may include, but is not limited to, illness or hospitalization, attendance at school, or employment duties, shall have their personal assistance services suspended and/or terminated, pursuant to N.J.A.C. 10:140-3.9.

(b) Personal assistants who fail to complete required courses or who request a waiver pursuant to N.J.A.C. 10:140-6.2 without good cause, which may include, but is not limited to, illness or hospitalization, attendance at school, or employment duties, shall be suspended and/or terminated from employment as a personal assistant under the Program, at the discretion of the county designated agency in consideration of course availability and the personal assistant's willingness to participate.]

10:140-[6.4]6.3 Compensation for attendance at training courses

(a) (No change.)

(b) Personal assistants shall be issued a stipend upon completion of training **referenced in N.J.A.C. 10:140-6.1(b)** at the rate of [\$9.00] **\$10.00** per hour by the designated training agency responsible for the administration of the Statewide training program under contract with the designated State agency.

SUBCHAPTER 7. COMPLIANCE WITH LAWS

10:140-7.1 Requirements of [county designated agency] **fiscal intermediary service organization**

(a) [All county designated agencies] **The fiscal intermediary service organization** shall abide by all laws and regulations concerning employment of persons hired to administer or work in the Personal Assistance Services Program including, but not limited to, the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1 et seq., and the Immigration Reform and Control Act of 1986 (P.L. 99-603).

(b) All county designated agencies shall conduct a check, or form an agreement with providers with whom they contract to conduct a check, that satisfies them as to the appropriateness of each personal assistant. The check as described in this subsection shall include, at a minimum, a personal reference check.]

**(b) At the consumer's discretion, they may choose to have the fiscal intermediary service organization conduct a background check on a perspective employee. The cost of the background check shall be reflected on the CMP and be deducted from the consumer's cash allotment.**

(c) [All county designated agencies] **The fiscal intermediary service organization** shall establish a separate accounting regarding receipt and use of cost share fees collected to ensure that cost share funds are used to expand or enhance program services in that county. These funds shall not supplant any existing allocation. This separate accounting and supporting documentation shall be made available to the designated State agency.

(d) All county designated agencies shall establish a local advisory council of which at least 51 percent of the members are persons with disabilities. This advisory council shall serve as a resource to the county designated agency on matters pertaining to the local administration of the Personal Assistance Services Program.

(e) All county designated agencies shall expend no more than 15 percent of their funding allocation towards the costs to administer the Personal Assistance Services Program. All other program funding shall be used towards direct services.]

10:140-7.2 Duties of county designated agency

(a) Under the direction of the designated State agency, the county designated agency shall perform the following duties:

1.-5. (No change.)

6. Designate a staff person to serve as [primary] a contact person for applicants, eligible consumers and personal assistants involved in the program and document such contacts;

[7. At the request of eligible consumers, arrange for personal assistance services and provide individual assistance in arranging for back-up personal assistance services. The back-up plan shall be

coordinated and mutually agreed upon by the consumer and the county designated agency;]

Recodify existing 8. and 9. as 7. and 8. (No change in text.)

[10. Prepare monthly reports for timely submission to the designated State agency;]

[11.] **9.** Serve as liaison to the designated State agency for the [Program] **program; and**

[12. Oversee the local program including verification of time sheets signed by eligible consumers and personal assistants attesting to hours of services rendered; and]

[13.] **10.** (No change in text.)

10:140-7.3 State Consumer Advisory Council on Personal Assistance Services

(a) The duties of the State Consumer Advisory Council on Personal Assistance Services shall consist of the following:

1.-4. (No change.)

5. Implement [the] **(a)1 through 4** above through utilization of [stenographic and clerical staff, administrative assistants, and such professional] staff **and equipment** as provided by the **Division of Disability Services, Department of Human Services.**

(b) The State Consumer Advisory Council on Personal Assistance Services shall adhere to the following requirements regarding membership:

1. The Advisory Council shall consist of [21] **19** members appointed by the Commissioner, [one from each county in New Jersey and] at least 75 percent of whom are consumers of personal assistance services;

**2. Members shall serve for a term of three years from the date of their appointment, effective on (the effective date of these amendments), and until their successors are appointed.** Vacancies in the membership shall be filled in the same manner provided for the original appointments[;]. **A member of the council shall be eligible for reappointment. The Commissioner shall appoint the council to staggered terms, which shall begin at the beginning of each fiscal year.**

**i. Seven members of the Council shall serve a one-year term;**

**ii. Six members of the Council shall serve a two-year term; and**

**iii. Six members of the Council shall serve a three-year term;**

**3. The Advisory Council shall have the following county-based makeup:**

**i. No less than five of the members shall be residents of Central Jersey, which for the purposes of this subparagraph, shall consist of the counties of Burlington, Hunterdon, Mercer, Middlesex, Monmouth, Somerset and Warren;**

**ii. No less than five of the members shall be residents of North Jersey, which for the purposes of this subparagraph, shall consist of the counties of Bergen, Essex, Hudson, Morris, Passaic, Sussex and Union; and**

**iii. No less than five of the members shall be residents of South Jersey, which for the purposes of this subparagraph, shall consist of the counties of Atlantic, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem;**

**4. Three members, appointed as follows:**

**i. One shall be a person representing a fiscal intermediary service organization;**

**ii. One representing a training vendor; and**

**iii. One from a vendor agency that provides personal care services;**

**5. The Commissioner or designee shall serve as a member of the Advisory Council;**

[3.] **6.** The Advisory Council shall **organize no later than 30 days after the appointment of its members and shall select a chairperson and vice chairperson** from among its members and a secretary who need not be a member of the Advisory Council; and

[4.] **5.** (No change in text.)

**(c) Local advisory bodies may form in the best interest of the program, but are not mandated and shall have no official duties.**