

HUMAN SERVICES

DIVISION OF DISABILITY SERVICES

Personal Assistance Services Program

Proposed Readoption with Amendments: N.J.A.C. 10:140

Authorized By: Elizabeth Connolly, Acting 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 2016-030.

Submit written comments by May 6, 2016, to:

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Note: Fax, e-mail, and TTY information provided to accommodate individuals with disabilities who may require alternative methods of communication to make comment.

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1.c(2), N.J.A.C. 10:140, Personal Assistance Services Program, will expire on July 28, 2016.

An administrative review of the chapter has been conducted and a determination made that N.J.A.C. 10:140 should be continued because the chapter is necessary, reasonable, and adequate for the purposes for which it was originally promulgated. The Personal Assistance Services Program (“PASP” or “Program”) provides up to 40 hours per week of personal assistance services to individuals between the ages of 18 and 70 with permanent disabilities. Personal assistance services include routine non-medical tasks that are performed by an assistant to enable individuals with a disability to be employed, prepare for employment, attend an educational or training program, and/or to support active participation in community-based activities (that is, volunteer service). The Department is proposing to readopt the chapter with amendments. The chapter contains seven subchapters as described below.

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

N.J.A.C. 10:140-1 contains general provisions relating to PASP services, including definitions and the Personal Assistance Consumer Bill of Rights.

N.J.A.C. 10:140-2 contains eligibility standards and provisions for requesting exceptions to those standards.

N.J.A.C. 10:140-3 contains provisions for screening and assessment, requirements for personal assistance services and cash management plans, a

description of service standards, and processes for service transfers, suspension, and termination. This subchapter also contains provisions for appeals and confidentiality requirements.

N.J.A.C. 10:140-4 contains standards for individual budgets and establishes maximum fees pertaining to the provision of PASP services.

N.J.A.C. 10:140-5 contains the requirements for personal assistance and domestic household employees.

N.J.A.C. 10:140-6 contains the training requirements for consumers participating in the PASP.

N.J.A.C. 10:140-7 contains information related to the fiscal intermediary service organization, the duties of the county designated agency, and the role of the State Consumer Advisory Council on Personal Assistance Services.

Proposed Amendments

N.J.A.C. 10:140-1.1 describes the purpose of the Program. The Division is proposing amendments at paragraph (a)1, regarding consumers that are in a paid occupation. The new language will now require individuals who indicate that they are in a paid occupation to meet the expanded definition of “employment” as defined under N.J.A.C. 10:140-1.4. The Division is proposing this change in order to further clarify what is meant by being in a paid occupation, which is one of the eligibility criteria for serving individuals enrolled in the Program.

N.J.A.C. 10:140-1.4 defines the terms and words used in this chapter. The Division is proposing amendments to several definitions for the purpose of clarification, to reflect a “cash and counseling” program model, and or for the purpose of consistency

with amendments proposed elsewhere in this rulemaking; these include the definitions of “employment” and “personal assistance services.”

The definition of “employment” is proposed for amendment to clarify the requirements for an individual who categorize himself or herself as self-employed in accordance with guidelines provided under the Internal Revenue Service, which requires a certain income level be obtained, as opposed to someone who is performing an activity that would be considered as a hobby. The Division believes that this amendment will strengthen the integrity of the program by ensuring that individuals receiving services will meet the targeted population as identified in the chapter.

The definition of “personal assistance service” is proposed for amendment to include that driving or other forms of transportation may not be used as a “stand-alone” service under the Program. The Division feels that this amendment is necessary in view of the fact that while a consumer may need driving or transportation services, the Program is not specifically designed to replace or duplicate other forms of service that may be available through public or para-transit services or other informal means.

The Division is proposing to add two new definitions to explain necessary components of the cash and counseling program model that are used throughout the chapter; these include the definitions of “application for Service and Statement of Understanding” and “county program consultant.”

The definition of “application and Service and Statement of Understanding” is proposed for addition to describe the form used under the program application process to detail the terms and conditions for participation. The Division believes that this

addition is necessary to ensure that the consumer fully understands the nature and responsibilities under the cash model program prior to entry into the Program.

The definition of “county program consultant” is proposed for addition to describe the roles and responsibilities of the consultant who is providing services to consumers, which serves an integral component under the cash model.

N.J.A.C. 10:140-1.5 defines the target population and priority for services. The Division proposes to amend paragraph (b)1 to clarify the requirements that consumers must meet to qualify as being “employed in a paid occupation.” Two new subparagraphs are proposed to clearly specify the requirements on how a consumer can claim employment as their program activity. Consumers will need to demonstrate active employment and to provide documentation to support this. Consumers will be required to provide documentation, in writing, from an independent third-party as a representative of the employing organization. The documentation must be provided on company/organization letterhead, be approved/signed by an official attesting to the hours worked, and include a detailed job description. The second new subparagraph requires the existing consumer to provide the documentation within 30 days of the effective date of this requirement.

The Division is proposing to amend N.J.A.C. 10:140-1.5(b)3i to clarify the requirements that consumers must meet to demonstrate that they are engaged in volunteer activities that will render them eligible for PASP services. In addition to consumers needing to demonstrate active participation in volunteer activities for a minimum of 20 hours per month, the proposed amendment will require consumers to

provide documentation to support this. Specifically, the proposed amendment requires consumers to provide documentation, in writing, from an independent third-party as a representative of the volunteer organization. The amendment further requires that documentation in support of this activity must be provided on company/organization letterhead and approved/signed by an official attesting to the hours worked, and requires a detailed job description. The Division believes this change is necessary to ensure that consumers are in fact meeting the target population, as defined under N.J.A.C. 10:140-1.5, and is requiring verification to support such claims to ensure compliance with Program requirements. The Division is proposing new N.J.A.C. 10:140-1.5(b)3iii to prohibit consumers from purchasing services from the same agency for whom they are providing volunteer services. The Division feels that this requirement is necessary to avoid a conflict of interest or the perception of same.

N.J.A.C. 10:140-2.1 describes the eligibility standards for the Program. The Division is proposing several amendments to describe the circumstances and manner by which consumers must notify the county designated agency of any changes to their employment, education, or volunteer activities. Proposed new N.J.A.C. 10:140-2.1(f)4 outlines those requirements. The Division believes that these new requirements are necessary to ensure that consumers continue to meet the eligibility requirements for services and to determine whether or not the change in activity would have any impact on the consumer's cost share obligation to the Program. The proposed new paragraph establishes time frames and procedural changes to ensure that all necessary actions are performed in a timely manner.

Proposed new N.J.A.C. 10:140-2.1(f)4i requires consumers to notify their county

designated agency of any change in activity within 15 business days of such change.

The proposed new subparagraph also permits consumers to provide notification orally or in writing.

Proposed new N.J.A.C. 10:140-2.1(f)4ii requires the county designated agency to notify the Division of Disability Services (Division) Program Administrator of any changes to a consumer's activity.

Proposed new N.J.A.C. 10:140-2.1(f)4iii requires the county designated agency to advise the consumer, in writing, of the need to provide documentation of changes to program activity within 30 days. The new regulation also states that the consumer will be suspended from the Program if he or she does not provide the required documentation within 30 days.

Proposed new N.J.A.C. 10:140-2.1(f)4iv confirms that consumers who provide the appropriate documentation requested and who continue to satisfy the Program's eligibility requirements will remain in good standing.

Proposed new N.J.A.C. 10:140-2.1(f)4v provides that if the documentation provided in accordance with proposed new subparagraph (f)4iii demonstrates that the consumer no longer meets the Program's eligibility requirements, then the county designated agency shall notify the consumer in writing. The county designated agency shall also afford the consumer the opportunity to submit additional documentation to support their continued eligibility for the program. If the consumer fails to provide written documentation within 30 days of receipt of the notice, the county designated agency will terminate services for the consumer. The consumer shall be notified of termination from the Program in writing. The Division feels that this new requirement is

necessary to ensure that Program participants continually meet Program requirements to be employed, to be engaged in education and/or training related to employment, or to be actively volunteering.

Proposed new N.J.A.C. 10:140-2.1(f)5 provides relief for consumers who lose their Program eligibility through no fault of their own. If consumers are able to engage in new Program activity within 90 days of the involuntary action, then the Division will permit the consumer to be enrolled in the Program without disruption. This is proposed to address situations where the consumer has been displaced from a job assignment or volunteer opportunity due to a closure or other action. The Division feels this would provide consumers with a fair opportunity to develop and implement a new planned activity, so that they can continue receiving Program supports.

Proposed new N.J.A.C. 10:140-2.1(f)5i requires a consumer to submit a new written plan of activity and all supporting documentation to the county designated agency. Proposed new subparagraph (f)5ii requires the designated State agency to review and approve the plan of activity. Proposed new subparagraph (f)5iii provides that if the consumer fails to submit a new plan of activity and/or implement the approved plan within 90 days he or she will be terminated from the Program. The Division feels that providing the 90-day extension to consumers provides them time to adjust and plan for new activities that will allow them to remain active on the Program.

N.J.A.C. 10:140-3.3 describes the requirements for individual personal assistance services and cash management plans. The Division proposes a new provision to establish more specific guidance related to expenditures of the consumer's cash allowance. Proposed new N.J.A.C. 10:140-3.3(i) provides that consumers may be

suspended from the Program for failure to utilize their monthly cash allocation for a period in excess of 60-days. Proposed new paragraph (i)1 requires the county designated agency to monitor the utilization of the cash grant by consumers on a monthly basis and provide necessary guidance to ensure that funds are being spent in accordance with Program requirements. Proposed new paragraph (i)2 requires the county designated agency to notify the Division when any consumer fails to comply with cash allocation expenditure requirements. The Division feels that these new provisions are necessary considering the transition of the Program to a cash model service delivery system. Under this model, consumers are in control of their monthly cash allocation and have the ability to make adjustment to their monthly budget to hire employees and purchase services and supports to make sure that their needs are being met. The county and State agencies have an obligation to make certain that consumers are making use of the available Program funds to address service needs.

The Division proposes to amend existing N.J.A.C. 10:140-3.5(b)3 to replace “services provided during employment” with “services provided at a place of employment” for language clarification purposes.

Proposed new N.J.A.C. 10:140-3.5(b)4 states that transportation services are not permitted as a standalone service under PASP. The Division feels that this is necessary because the Program is not designed as a replacement for transportation services. Such services are available through other program resources (such as public transit or para-transit services).

Proposed new N.J.A.C. 10:140-3.5(d) will allow consumers to fund PASP services on a temporary basis while out-of-State for the purposes of vacation, or

extended stay at an alternate residence. Proposed new paragraph (d)1 requires consumers to inform their county designated agency of any plans to leave the State at least 48 hours in advance. The consumer must also provide details on departure and return dates and emergency contact information.

Proposed new N.J.A.C. 10:140-3.5(d)2 permits a personal assistant to accompany consumers during any trip out-of-State and may to receive payment for services performed during that period. Proposed new paragraph (d)3 states that Program funds may not be used towards ancillary costs related to any trip, such as airfare, car rental, or hotel expense, for either the consumer or the consumer's personal assistant.

Proposed new N.J.A.C. 10:140-3.5(d)4 permits consumers to travel out-of-State for up to 30 days. While the Program is primarily designed to support consumers through the provision of personal assistance services for eligible activities, the Program also seeks to improve and enhance independence for consumers by providing a measure of choice and flexibility. With this in mind, the Division supports the concept that consumers should be able to be mobile and leave their primary New Jersey residence on a temporary basis and allow continuation of services while away within certain limitations.

Proposed new N.J.A.C. 10:140-3.5(e) puts consumers on notice that failure to provide the proper notification to the designated county agency prior to traveling out-of-State could result in a disallowance of payments made to a personal assistant and/or termination from the Program. The Division feels that this provision is required in order for the county designated agency and the State to be able to monitor service provision

and maintain appropriate management of the Program.

Proposed new N.J.A.C. 10:140-3.5(f) specifies that Program termination will be retroactive to the date of the consumer's departure from the State. In addition, the consumer will be responsible for payment of any service costs incurred after the departure. The Division is proposing this provision in order to ensure that consumers comply with specific obligations to inform their county designated agency and to avoid an influx of situations in which individuals simply leave the State without further notice in the future.

Proposed new N.J.A.C. 10:140-3.5(g) allows consumers to request an exception to the 30-day maximum for travel out-of-State. Exceptions will be granted at the discretion of the Division Director. Exception requests must be made in writing, at least 30 days prior to departure, and must specify the duration of the trip, the need for an extended stay out-of-State, and include an assurance that the consumer will return to New Jersey. This Division feels that this provision will help to ensure that program funding is used for consumers residing in New Jersey.

N.J.A.C. 10:140-3.9 establishes procedures for suspending and/or terminating a consumer from PASP. The Division is proposing amendments throughout this section to clarify that services may be suspended on a voluntary basis but may not be terminated on a voluntary basis.

The Division is proposing to amend N.J.A.C. 10:140-3.9(c) to extend the timeframe for the county designated agency to provide advance notice of a pending termination from 30 to 60 days. The Division believes it is necessary and appropriate to provide a consumer with additional time to adjust to termination from the Program.

Proposed new subsection (g), however, provides the Division with the ability to issue an involuntary termination in less than 60 days in situations in which there is abuse or misuse of personal assistance services, failure to manage situations that place the personal assistant at an increased risk, or duplication of services through other service programs, as discussed below.

The Division is proposing new N.J.A.C. 10:140-3.9(g) to establish the ability of the Division Director to immediately terminate a consumer from PASP in circumstances where the consumer willfully misrepresents Program activities or makes fraudulent use of Program services or funds. Examples of the types of actions that might result in immediate termination include, but are not limited to, falsifying timesheets, failing to disclose loss of Program activity, and/or failing to disclose of entitlement services. The Division is proposing this provision as an added means of ensuring consumers comply with Program requirements and that Program resources are being used for legitimate purposes. The Division is also proposing the authority to recover the costs of PASP services where the consumer has engaged in willful, fraudulent misrepresentation of Program activities, as paragraph (g)1. Proposed new N.J.A.C. 10:140-3.9(g)1 also requires the county designated agencies to notify consumers, in writing, of an immediate termination under this subsection and also requires the county designated agency to advise the consumer of the need to repay funds to the Program as a result of any willful misrepresentation of Program activity or commission of a fraudulent use of Program services or funds. The written notice from the county designated agencies shall include the amount owed by the consumer, the time frame covered and instructions for making repayment. Proposed new paragraph (g)2 permits the Division

to refer the matter to a collections agency in event the funds are not returned.

Proposed new paragraph (g)3 imposes a lifetime ban from Program participation if the consumer commits any act that violates this subsection. The lifetime ban can only be imposed at the discretion of the Commissioner, upon the recommendation of the Division Director. This subsection is proposed to maintain greater control and eliminate instances of fraud and abuse in the Program.

Proposed amendments to N.J.A.C. 10:140-3.10(d) and 3.11(b) correct the mailing address for the PASP program.

Proposed amendments to N.J.A.C. 10:140-4.1 describe additional options that consumers have for using their monthly cash allowance. Specifically proposed new paragraph (a)3 allows a consumer to purchase background checks and benefits for workers hired; proposed new paragraph (a)4 allows for purchase of rental, homeowner's, or liability insurance related to employment of workers; proposed new paragraph (a)5 enables purchase of training/education for workers; and proposed new paragraph (a)6 allows for the purchase of home or vehicular modifications, or supplies and/or equipment to reduce or eliminate the need for worker assistance. The Division feels it is necessary to expand the language under this subsection to reflect the options that are already available to consumers under the Program.

Proposed new N.J.A.C. 10:140-4.1(b) describes the types of expenses that will not be covered by the monthly cash allowance. Those expenses, goods, and services covered by Medicaid or other entitlement programs, goods and services provided to or supporting persons other than the individual consumer, household expenses, recreational and social/entertainment expenses, alcohol, recreational drugs (legal and

illegal), and gambling purchases, and personal services and items, including, but limited to: clothing, medications, experimental treatments, massages, manicures, haircuts, pedicures, and other types of salon services. The Division feels it is necessary to identify those expenses that are deemed non-acceptable as result of not being directly related to personal care of the consumer. While the purpose of making purchases or goods gives the consumer options to address personal care needs, the end result should be to reduce and/or eliminate the need to hire a worker(s) to perform necessary tasks. Thus, the essential purchase would be in place of a need for a worker and enable the consumer greater independence in accordance with the overall goal and mission for the Program. This proposed new subsection seeks to clarify Program options and limitations, which will help in the overall management and administration of the Program.

Proposed new N.J.A.C. 10:140-4.1(c) states that the cash allowance may not be used to make environmental modifications to new residential construction. The Program is not intended to underwrite the cost of home construction.

Proposed new N.J.A.C. 10:140-4.1(d) and (e) describe the circumstances and process by which the Division Director will consider and issue exceptions for the purchase of certain items that would otherwise be prohibited under N.J.A.C. 10:140-4.1(b). The Division proposes to make exceptions in unusual situations provided the request item(s) is related to the personal care needs of the individual and will alleviate a need for a paid worker to perform tasks.

Proposed amendments at N.J.A.C. 10:140-4.3(e) to require the county designated agency to redetermine a consumer's cost share obligation when there has

been a change in the consumer's income. The proposed amendment ensures that the consumer's cost sharing obligation is accurate and appropriate.

N.J.A.C. 10:140-4.5 sets forth the procedures for requesting adjustments in consumer cost share. Proposed new paragraphs (f)1 and 2 require consumers to establish a repayment plan to repay any outstanding cost balances owed to the Program. If a consumer fails to make payments consistent with that plan, then the consumer will be suspended from the Program until the debt is retired in full. The Division feels strongly that consumers must comply with their cost share obligation to remain in good standing on the Program. Furthermore, cost share funds are used to expand Program services to prospective applicants.

N.J.A.C. 10:140-4.5(g) is proposed for amendment to specify that where a cost adjustment has been requested and denied, the consumer continues to be obligated to pay the assessed cost share. The Division feels that this amendment is necessary to clarify that requirement for consumers.

N.J.A.C. 10:140-7.2 sets forth the duties of the county designated agency. The proposed amendment to subsection (a) specifically requires the county designated agency to serve as a "consultant." This change is necessary to reflect changes in the role served by the county designated agency as a result of the transition to a cash model.

Proposed new N.J.A.C. 10:140-7.2(a)11 through 18 specify additional duties as required under the new cash model. The Division feels it is necessary to identify the

new duties under the Program to ensure the county designated agency is made fully aware of their new responsibilities in the provision of services under the cash model.

Proposed new N.J.A.C. 10:140-7.2(a)11 requires the county designated agency to explain the components and operation of the Program and the responsibilities and options available under the cash model.

Proposed new N.J.A.C. 10:140-7.2(a)12 requires the county designated agency to develop an awareness of the consumer's personal assistance needs, including an awareness of existing informal supports and the consumer's preferences and choices.

Proposed new N.J.A.C. 10:140-7.2(a)13 requires the county designated agency to collect and maintain available information on formal and informal support systems, community resources, and personal assistance services. The county designated agency will be required to share this information when requested.

Proposed new N.J.A.C. 10:140-7.2(a)14 requires the county designated agency to assist consumers in completing a Plan of Service to identify personal assistance needs and to develop a Cash Management Plan.

Proposed new N.J.A.C. 10:140-7.2(a)15 requires the county designated agency to advise consumers on how to locate services or equipment, make use of the fiscal intermediary service, and recruit, hire, and terminate personal assistants.

Proposed new N.J.A.C. 10:140-7.2(a)16 requires the county designated agency to assist consumers to locate sources of training and technical assistance.

Proposed new N.J.A.C. 10:140-7.2(a)17 requires the county designated agency to interact and collaborate with staff from other Program components (fiscal intermediary, etc.) to facilitate Program coordination.

Proposed new N.J.A.C. 10:140-7.2(a)18 requires the county designated agency to conduct periodic evaluation of consumer progress to determine Program effectiveness.

Social Impact

The Division anticipates that the rules proposed for readoption with amendments will provide a positive social impact on the lives of individuals in New Jersey with permanent physical disabilities. As of December 2014, 560 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 their direction of 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 participation in their community.

The services provided under the Personal Assistance Services Program enable consumers to be employed or prepare for employment in order to become self-sufficient, and thus result in a significant social benefit for people with disabilities. 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 the Program in all aspects of community life, advances civil liberties to the benefit of society as a whole.

With the changes implemented since 2010, the Program reflects positive changes in that 42 percent of the consumers are currently employed, representing a six percent increase, and 28 percent are currently enrolled in an education or training program related to employment, representing a nine percent increase. These trends represent improved opportunities for program consumers and support the mission of the program to live independently in the community and be self-sufficient.

Economic Impact

The Division believes that the rules proposed for re adoption with amendments 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 supported through a line item in the Division budget every year. For State Fiscal Year 2014, \$11.1 million dollars from general and casino revenues has been appropriated to administer this program. The program averages about 500 participants.

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. In fact, current data for 2014 indicate that with the rules proposed for re adoption with amendments, the percentage of program consumers now paying a cost share fee has

been reduced to nine percent. At present time, the fiscal intermediary maintains a balance of \$1.1 million dollars in cost share for program service expansion.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments 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 rules proposed for readoption with amendments 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 rules proposed for readoption with amendments will have a dual benefit; providing a source of personal care services to individuals who may be disadvantaged when seeking agency services given 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 anticipates no impact on the agriculture industry in New Jersey as a result of the rules proposed for re adoption with amendments.

Regulatory Flexibility Statement

The providers under the 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 serve as county-designated agencies under the Program as well. These organizations are serving in the function of the county governments and/or the State and, therefore, are not small businesses, as that term is defined in N.J.S.A. 52:14B-16 et seq., and for the purposes of the rules proposed for re adoption with amendments are subject to the same reporting, recordkeeping, and other compliance requirements as the government entities. 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 with the rules proposed for re adoption with amendments.

Housing Affordability Impact Analysis

The rules proposed for re adoption with amendments will have an insignificant impact on the affordability of housing in New Jersey. It is quite unlikely that the rules would evoke a change in the average costs associated with housing because the rules

pertain only to the Personal Assistance Services Program, which has no effect on housing.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on smart growth. It is very unlikely 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 only to the Personal Assistance Services Program, which has no effect on housing.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:140.

Full text of the proposed amendments 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 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 permanent physical disabilities to:

1. Be employed in a paid occupation (**as defined in the definition of “employment” under N.J.A.C. 10:140-1.4**);
- 2.-3. (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:

...

“Application for Service and Statement of Understanding” means a program document that is designed to serve as a notice of the terms and conditions for participation in the Personal Assistance Services Program. Prospective consumers must be capable of fully understanding, and be agreeable and willing to assume responsibility for, the items that are indicated on the form prior to enrollment.

...

“County program consultant” means an individual employed by or under contract with the county designated agency who serves as the primary support for consumers and provides individual guidance and periodic monitoring of service activities to ensure the needs are being met under the Program.

...

"Employment" means working in a paid occupation, whether in cash or in kind, including, but not limited to, [full time] **full-time** employment; [part time] **part-time**

employment; the practice of a profession; self-employment; farm work; home-based employment; or other gainful work. **An individual who identifies himself or herself as self-employed must have net earnings of at least \$400.00 annually in accordance with requirements of the Internal Revenue Services under Title 26 of the United States Code and file taxes accordingly.**

...

"Personal assistance service" means 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 or other forms of transportation. **Driving or other forms of transportation may not be used as a "stand-alone" service without the need for other health and chore-related tasks.**

...

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. Employed in a paid occupation[;] **(in accordance with the definition of "employment" at N.J.A.C. 10:140-1.4).**

i. A consumer shall be employed and provide supporting

documentation upon request of the Program. Documentation of employment activities must be provided in writing by an independent third-party, on company/ organization letterhead and/or approved/signed by an official of the company/ organization attesting to the hours worked. The documentation shall include a job description indicating the specific tasks performed under the assignment.

ii. Existing consumers who claim employment as their Program activity shall meet this requirement by (30 days from the effective date of this amendment), in order to remain compliant in the Program.

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] **Program.**

Documentation of volunteer activities must be provided in writing by an independent third-party, on company/ organization letterhead and/or approved/signed by an official of the company/ organization attesting to the hours worked. The documentation shall include a job description indicating the specific tasks performed under the assignment.

ii. [Existing consumers must meet this requirement by May 16, 2012.] The Division shall impose a 90-day look-back period to verify both the longevity and sustainability of the volunteer activity.

iii. Consumers who are purchasing personal care services through a contracted agency are not permitted to use the same agency for the purposes of

volunteer services in order to qualify for services under (b)1 above.

(c) – (d) (No change.)

SUBCHAPTER 2. ELIGIBILITY

10:140-2.1 Eligibility standards

(a) - (e) (No change.)

(f) It is the responsibility of the consumer to maintain [program] **Program** eligibility in good standing. A consumer shall be determined to be in good standing by doing the following:

1. (No change.)
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[.]; **and**
4. **Notifying the county designated agency of any change(s) in Program activity as described under N.J.A.C. 10:140-1.1 and 1.5(a) and (b), including, but not limited to, acquiring new employment, loss of employment, withdrawal from or completion of a post-secondary educational or training program, new enrollment in a post-secondary educational or training program, participation in new volunteer activity, or withdrawal from or termination of participation in a volunteer activity. Consumers shall be required to submit documentation to support such change.**
 - i. **Consumers must notify their county designated agency Program**

consultant of any significant change in Program activity immediately but no longer than 15 business days. Notification may be performed verbally, in writing, or electronically (computer message).

ii. Upon receipt of notification from the consumer, the county designated agency shall inform the Division of Disability Services (DDS) PASP Program Administrator.

iii. The county designated agency shall inform the consumer in writing of the need to provide documentation of involvement in Program activity within 30 days of receipt of request to ensure compliance with N.J.A.C. 10:140-1.1 and 1.5(a) and (b). The written notification shall inform the consumer that failure to respond to the request in writing within the 30-day timeframe shall result in a suspension from the Program.

iv. In the event that the requested documentation under (c) above is received in a timely manner and meets the criteria established under N.J.A.C. 10:140-1.1 and 1.5(a) and (b), the consumer's eligibility status for PASP shall remain in good standing.

v. In the event the requested documentation is received within the 30-day timeframe, but is deemed as unacceptable (does not meet Program activity requirements), the consumer shall be notified in writing of this determination by the county designated agency. In the event the consumer is unable to provide appropriate documentation to ensure compliance with N.J.A.C. 10:140-1.1 and 1.5(a) and (b), he or she will be terminated from the Program within 30 days of receipt of the letter. A notice of termination shall be issued to the

consumer by the county designated agency pursuant to the actions described in this section.

5. In situations in which a consumer no longer meets eligibility requirements under N.J.A.C. 10:140-1.1 through no fault of his or her own (such as employer closure/moving, significant health change, volunteer agency closure, etc.), a Program activity plan shall be required and implemented within 90 days from the date of activity change in order to remain eligible for the Program.

i. The Program activity plan must be submitted to the county designated agency in writing along with documentation to support said activity.

ii. The Program activity plan shall be reviewed and approved by the designated State agency.

iii. Failure to provide the Program activity plan and/or implement the approved activity within 90 days of date of activity change shall result in a termination from the Program due to continued non-compliance with N.J.A.C. 10:140-1.1.

SUBCHAPTER 3. SCREENING, SERVICES, AND APPEALS

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

(a) – (h) (No change.)

(i) Consumers may be subject to suspension from the Program for failure to utilize their cash allowance in excess of a 60-day period or greater.

1. The county designated agency shall monitor the utilization of the cash allowance by the consumer, on a monthly basis, and provide necessary guidance

to ensure that funds are being spent in accordance with Program requirements.

2. The county designated agency shall inform the designated State agency of any consumer non-compliance with this subsection and determine necessary action to ensure that Program funds are spent.

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. (No change.)

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]

3. Personal assistance services provided [during] **at a place of** employment shall not replace or duplicate those services or accommodations provided by an employer as mandated by the Americans With Disabilities Act of 1990, P.L. 101-336, 42 U.S.C. § 12111[.]; **and**

4. Driving or other forms of transportation shall not be permitted exclusively without the need for other health and chore-related services.

(c) (No change.)

(d) Consumers may be afforded services during a temporary out-of-State stay (such as a vacation or stay at an alternate residence), subject to the following

conditions and procedures:

1. Consumers that are planning to leave the State (other than primary New Jersey residence) must inform their county designated agency, a minimum of 48 hours prior to leaving and indicate details pertaining to dates of departure and return and emergency contact information.

2. Employees may accompany their consumer, as determined necessary to leave the State, and may continue to receive payment for services performed accordingly, as indicated under the cash management plan.

3. Any ancillary costs related to an out-of-State trip for consumers and/or employees under (d)2 above, including, but not limited to, airfare, hotel, or vehicle rentals, etc., may not be paid out of Program funds.

4. Consumers are permitted up to a maximum of 30 continuous days for out-of-State stay per request.

(e) Failure to provide requested information as described in (d)1 above may result in a participant's worker(s) not being paid and/or possible termination, due to an inability to verify location and performance of duties under the cash management plan.

(f) Consumers that leave their New Jersey residence for an out-of-State stay without the required notification to their county designated agency pursuant to (d)1 above will be subject to termination retroactive to the date of departure from the State. The consumer will be responsible for any cost of services as of the departure date as a result of non-compliance.

(g) Exceptions to the 30-day maximum as described in (d)4 above, may be

granted at the discretion of the Division Director, on a case-by-case basis, according to the following standards and procedures:

1. Requests must be submitted in writing (or other approved electronic communication) to the State Program Administrator at least 30 days prior to leaving the State;

2. The request shall include contact information for the trip (for example, address and telephone number) for emergency purposes and billing of cost share obligation fees, and indicate the expected date of return to the consumer's New Jersey residence;

3. The written request must indicate the reason(s) and/or justification for additional time beyond the 30-day limit;

4. The request must provide for assurances that all planned trip(s) will not present a conflict with required annual Program reassessment; and

5. The consumer must give assurances of his or her intent to return and maintain permanent residence in New Jersey and to maintain program activity requirements for eligibility purposes pursuant to N.J.A.C. 10:140-1.1(a).

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

(a) Suspension of service [and termination of service] may be either voluntary or involuntary. Voluntary suspensions [and terminations] involve situations in which eligible consumers agree to the temporary suspension [or permanent cessation] of services. All other suspensions [and terminations] are considered to be involuntary.

(b) Voluntary suspension of service shall not exceed a total of 90 days[,] and shall be

implemented as follows:

1. - .3 (No change.)

4. At the end of a 90-day **voluntary** suspension period, the county designated agency shall determine whether the consumer's services are to be resumed or terminated[,] and provide appropriate written notification to the consumer regarding the decision rendered.

(c) Consumers who are [involuntarily suspended or] terminated from services shall receive written notice from the county designated agency at least [30] **60** days prior to the effective date of the [suspension or] termination. Consumers may receive notice of [an involuntary suspension or] termination in less than [30] **60** days at the discretion of the county designated agency in those situations described in (e)4, 7, and 8 below.

(d) [Involuntary suspensions or terminations] **Terminations** may be the result of [State mandated] **State-mandated** reductions in [program] **Program** funding to the county designated agency when the county designated agency has no alternative means of supplementing funding for the services.

1. In determining whether services will be [involuntarily suspended or involuntarily] terminated, the county designated agency shall consider the current and future availability of alternative means of funding the services.

2. Consumers shall receive written notice of [involuntary suspensions or] terminations due to [State mandated] **State-mandated** reductions in [program] **Program** funding, in accordance with [N.J.A.C. 10:140-3.9](c) **above**.

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

limited to:

1. - .8 (No change.)

(f) In determining whether services will be [involuntarily suspended or involuntarily] terminated as described in (e) above, the county designated agency shall consider the specifics of the situation, on a case-by-case basis, including, but not limited to, the following factors:

1. – 3. (No change.)

(g) Any willful misrepresentation of Program activity or commission of a fraudulent use of Program services or funds (willful actions, such as falsifying timesheets, failure to disclose loss of Program activity, non-disclosure of entitlement services funded by other Federal programs pursuant to N.J.A.C. 10:140-2.1(b)8, etc.) will result in an immediate termination from the Program.

1. Commission of any acts described in this subsection shall obligate the consumer to repay the Program for the cost of services. The designated State agency shall notify the consumer in writing, of the need to repay for cost of services and identify the payment amount and time frame and instructions for submission of payment(s).

2. In the event of a non-payment for the cost of services as set forth in (g)1 above, the Division reserves to right to refer the debt amount to a collection agency for further action.

3. Commission of any activities described in this subsection shall result in a lifetime ban from eligibility for the Program. This action is at the discretion of the Commissioner upon recommendation from the Division.

10:140-3.10 Adverse agency actions

(a) – (c) (No change.)

(d) In addition, all written notices of such adverse action shall contain the following statement:

"An applicant to or eligible consumer of the Personal Assistance Services Program, who is dissatisfied with any decision regarding an eligibility determination or other matters pertaining to participation in the Personal Assistance Services Program, may file a request for an administrative review of that decision. The applicant or eligible consumer shall not be afforded an administrative review when the adverse agency action is due to State mandated reductions in funding, unless the request for a review is based on a claim of inaccuracy or misapplication by the county designated agency.

A request for an administrative review must be made within 30 days of the date of written notice of an adverse agency action.

Request for an administrative review may be made by telephone or letter to the:

State Program Administrator
Personal Assistance Services Program
Division of Disability Services
PO Box [700] **705**
Trenton, New Jersey 08625-[0700]**0705**
1-888-285-3036"

(e) – (h) (No change.)

10:140-3.11 Hearings and appeals

(a) (No change.)

(b) An administrative hearing may be requested by calling or writing to the:

State Program Administrator

Personal Assistance Services Program

Division of Disability Services

PO Box [700] **705**

Trenton, New Jersey 08625-[0700]**0705**

1-888-285-3036

(c)–(g) (No change.)

SUBCHAPTER 4. INDIVIDUAL BUDGETS AND FEES

10:140-4.1 [Contracting for services] **Standards for individual budgets and use of cash allowance**

(a) [The] **In using the cash allowance, 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[.];

3. Purchase background checks and benefits for employees hired;

4. Purchase rental or homeowner's insurance or other liability insurance related to consumer's role of employer;

5. Purchase personal assistance services training and education for workers; or

6. Purchase home or vehicular modifications, supplies, and/or equipment that alleviate the need for employee assistance and promote or enhance independence, and are not currently paid for by other Program resources.

(b) The following expense items shall not be approved for use under the cash allowance:

1. Goods and services already covered by Medicaid or other entitlement programs;

2. Goods and services provided to supporting persons other than the individual consumer;

3. Household expenses including, but not limited to, rent, mortgage, or room and board payments, routine utility bills, routine home maintenance/repairs and related cleaning supplies, home appliances (air conditioners, stoves, ranges, heaters, etc.), furniture and furnishings (linens, blankets, curtains, etc.), food/food supplements, routine home supplies (paint, hardware store purchases), vehicle maintenance/repairs and insurance, and landscaping and related yard work;

4. Recreational and social/entertainment expenses, including, but not limited to, exercise equipment and fitness memberships; vacations and related travel costs, household entertainment and equipment (TVs, VCRs, computers, stereos, all telephones, etc.), alcohol, recreational drugs (legal and illegal), and gambling purchases;

5. Personal services and items, including, but limited to, clothing, shoes

and related accessories, all medications (prescription or over-the-counter), vitamins and supplements, experimental treatments and related supplies, massages, manicures, haircuts, pedicures, and other types of salon services;

6. Environmental modifications shall not be used for new residential construction, even if the new dwelling is designed to accommodate the personal care needs of a participant;

7. Exceptions to (b)3 above for home appliances, may be considered and approved, at the discretion of the Division Director, on a case-by-case basis, in extreme or unusual circumstances directly related to the consumer's personal care needs. Approval of such an exception may result in a reduction in a consumer's monthly cash allocation, due to the approved purchase alleviating the need for assistance from a worker, and therefore enabling the consumer to perform a task(s) independently; and

8. All other requests for services or purchases aside from those items either approved in (a) above or disallowed under (b) above, may be approved at the discretion of the Division Director, on a case-by-case basis. Approval of such an exception may result in a reduction in a consumer's monthly cash allocation, and shall be based upon the nature of the request in alleviating the need for assistance from a worker, and therefore enabling the consumer to perform a task(s) independently.

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

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

(e) Each consumer shall provide verification of annual gross 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 the cost share obligation fees shall be made by the county designated agency and redetermined every 12 months **at a minimum**.

1. (No change.)

2. Redetermination of cost share obligation fees shall be required prior to the 12-month requirement as stated in this subsection, in situations in which the consumer has a change in Program activity affecting changes in income. Such changes would include, acquisition of new employment, loss of employment, increase or decrease in employment salary/wages (that is, hourly wage increase, promotion, demotion, layoff, etc.), loss of, or gain of, a new benefit (that is, Social Security, SSI, AFDC benefits, private disability, alimony/child support, pensions/annuities, workers compensation, insurance payments, estate/trust income, rental income, or royalties, etc.), or increase or decrease in benefit payments.

(f) – (j) (No change.)

10:140-4.4 Standards for adjustments in consumer cost share obligation

(a) (No change.)

(b) Adjustments in cost share obligations shall be reevaluated [annually] **every 12 months** 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 cost share obligation

(a) – (e) (No change.)

(f) A consumer requesting adjustment in his or her consumer fee shall continue to pay the original percentage of the total cost of service assessed pursuant to N.J.A.C.

10:140-4.3(a), (b), (c), and (d), pending the consumer's submission of written justification and verification of expenses under [N.J.A.C. 10:140-4.5](a) and (b) **above** and approval by the State Program Administrator of the consumer's request for an adjustment under [N.J.A.C. 10:140-4.5](c) **above**.

1. In the event a consumer has an outstanding cost share balance owed to the Program, the approval of an adjustment (reduction) in fees shall be contingent upon the consumer's completion of a repayment plan to retire the debt, which must be approved by the county designated agency and designated State agency.

2. Failure to complete the cost share repayment plan as described in (f)1 above and/or make restitution in the accordance with the plan shall result in suspension from the Program until such time the remaining debt is retired in full.

(g) The designated State agency shall deny an adjustment in the consumer's fee when the consumer fails to submit a written request, justification, and appropriate verification of expenses within the time frame specified in (a) above. **In the event of a denial of a**

request for an adjustment in the consumer’s obligation, the consumer shall be required to pay the determined percentage of the total cost of service assessed pursuant to N.J.A.C. 10:140-4.3.

SUBCHAPTER 7. COMPLIANCE WITH LAWS

10:140-7.2 Duties of county designated agency

(a) Under the direction of the designated State agency, the county designated agency **serves in the role of a “consultant” providing primary front line support and guidance to consumer, and** shall perform the following duties:

1.–8 (No change.)

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

10. Coordinate activities with the designated training agency to ensure completion of mandatory training requirements for consumers and personal assistants, according to N.J.A.C. 10:140-6.1[.];

11. Explains the components and operation of the Program and assists the consumer in understanding the responsibilities and options involved under the cash model, as described in the Application for Service and Agreement of Understanding;

12. Develops an awareness of the consumer’s personal assistance needs, including an awareness of any informal supports and the individual’s preferences and choices;

13. Gathers information and maintains data on formal and informal support

systems, community resources, and personal assistance services and shares the information with consumers at their request;

14. Assists consumers in completing a Plan of Service to determine personal assistance needs and with the development of a Cash Management Plan;

15. Advises the consumer regarding locating services or equipment, recruiting, hiring and firing workers, and using the fiscal intermediary service;

16. Assists consumers in locating sources of training and technical assistance;

17. Interacts and collaborates with staff from other Program components (fiscal intermediary, etc.) for Program coordination; and

18. Conducts periodic evaluation of consumer progress on Program effectiveness.