

**OTHER AGENCIES**

**OFFICE OF THE STATE COMPTROLLER**

**Rules of the Office of the State Comptroller**

**Proposed Readoption with Recodification and Amendments: N.J.A.C. 17:44 as 19:70**

**Proposed Recodifications with Amendments: N.J.A.C. 17:44-1.3, 1.4, 1.5, and 2.2 as 19:70-**

**1A.1, 1A.2, 1A.3, and 1.6, Respectively**

**Proposed New Rules: N.J.A.C. 19:70-1.3, 1.4, 1.5, 1A.4, 1A.5, 3.5, 4, and 5**

**Proposed Repeal: N.J.A.C. 17:44-3.6**

Authorized By: Kevin D. Walsh, Acting State Comptroller.

Authority: N.J.S.A. 52:15C-1 et seq., specifically 52:15C-8(a).

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

Proposal Number: PRN 2024-019.

Submit written comments by April 5, 2024, to:

Robert P. Shane, Esq.

Chief Counsel, Office of the State Comptroller

PO Box 024

Trenton, NJ 08625

or through email: [osc.regulations@osc.nj.gov](mailto:osc.regulations@osc.nj.gov)

**Summary**

As the Office of the State Comptroller (OSC) 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.

The OSC was established at N.J.S.A. 52:15C-1 et seq., as an independent office that

reports directly to the Governor. The mission of the OSC is to promote the integrity and transparency of government operations by conducting independent audits of public entities and reviewing public contracts. Pursuant to N.J.S.A. 52:15C-2, the OSC is in, but not of, the Department of the Treasury, and is “independent of any supervision or control by the State Treasurer, or the department or by any division, board, office, or other officer thereof.” Therefore, the OSC proposes to recodify its rules as N.J.A.C. 19:70 through this notice of proposed readoption.

The rules proposed for readoption with recodifications, amendments, new rules, and a repeal are intended to clarify the organization, functions, and powers of the OSC, as well as the reporting requirements for entities subject to its oversight. Throughout the chapter, amendments are proposed for grammar, codifications, readability, statutory citations, and stylistic updates and are not discussed further below. Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 17:44 was scheduled to expire on July 7, 2024. As the OSC filed this notice of readoption prior to that date, the expiration date was extended 180 days to January 3, 2025, pursuant to N.J.S.A. 52:14B-5.1.c(2).

Existing N.J.A.C. 17:44-1 sets forth the general provisions related to the Office of the State Comptroller, existing N.J.A.C. 17:44-2 sets forth the provisions related to the Audit Division, and existing N.J.A.C. 17:44-3 sets forth the provisions related to the Procurement Division. The discussion below of the changes to the rules will all use the “as recodified” codification of the rules (that is, where the rule will be located at N.J.A.C. 19:70).

N.J.A.C. 19:70-1.1 is proposed for amendment to include OSC’s statutory authority, and sets forth its audit, public contracting oversight, investigation, assessment, and Medicaid program oversight responsibilities.

N.J.A.C. 19:70-1.2 is proposed for amendment to add definitions for “Audit Division,”

“Investigations Division,” “Medicaid,” “Medicaid Fraud Division,” “post-award review threshold,” “pre-advertisement review threshold,” “project,” and “Public Contracting Oversight Division.” The definitions of “contract,” “emergency procurement,” “procurement process,” and “third-party contract” are proposed for amendment. “Contract” is proposed for amendment to include changes, extensions, and renewals to contracts. “Emergency procurement” is proposed for amendment to include the “immediate performance of services or delivery of goods.” “Procurement process” is proposed for amendment to include waivers and exceptions to the advertising process. “Third-party contract” is proposed for deletion and replacement to clarify what constitutes a third-party contract. The term “cooperative purchasing agreement” is proposed for amendment to change the term to “cooperative contract” and include a cross-reference to N.J.A.C. 5:34-7.

Proposed new N.J.A.C. 19:70-1.3 establishes that OSC shall publish all notices of rulemaking activity and public hearing information on its website and shall distribute such notices through its electronic mailing list in accordance with N.J.S.A. 52:14B-3 and 4 and to include that publication on the OSC’s website shall be considered the OSC’s other secondary notice. Proposed new N.J.A.C. 19:70-1.4 establishes an opportunity to be heard, a determination of public interest, and procedures for petitions for rulemaking in accordance with N.J.S.A. 52:14B-4. Proposed new N.J.A.C. 19:70-1.5 establishes certain records as exempt from disclosure and not considered government records pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

N.J.A.C. 19:70-1.6(a)1 is added to state that vendors, contractors, and other persons entering into contracts with covered entities should exercise sound business judgement in preserving documentation and data. N.J.A.C. 19:70-1.6(b) is proposed for amendment to delete

the specified date, as it is no longer relevant.

Proposed new Subchapter 1A, Organization Rules, establishes the organization of OSC and the functions of its divisions. Existing N.J.A.C. 17:44-1.3, 1.4, and 1.5 are proposed for recodification as new Subchapter 1A, as N.J.A.C. 19:70-1A.1, 1A.2, and 1A.3, respectively. N.J.A.C. 19:70-1A.1 is proposed for amendment to clarify that OSC is an independent office that reports directly to the Governor and is independent of any supervision or control by the State Treasurer. It also sets forth that OSC investigates allegations of fraud, waste, and abuse at all levels of New Jersey government, and conducts investigations and audits of the Medicaid program. N.J.A.C. 19:70-1A.2 is proposed for amendment to include that the Audit Division may issue public letters or reports. N.J.A.C. 19:70-1A.3 is proposed for amendment to clarify that the Public Contracting Oversight Division, in addition to monitoring and reviewing, also provides guidance on contracts under the OSC's jurisdiction to ensure competition, transparency, public confidence in government, and avoidance of favoritism and to correct deficiencies in contracts prior to advertisement. Proposed amendments at N.J.A.C. 19:70-1A.3 also include a list of applicable public contracting laws and establishes that the Public Contracting Oversight Division may issue public letters or reports. Proposed new N.J.A.C. 19:70-1A.4 establishes and sets forth the functions of the Investigations Division, which investigates allegations of fraud, waste, and abuse concerning all levels of New Jersey government for the purpose of promoting integrity, efficiency, accountability, and transparency, and releases reports and letters. Proposed new N.J.A.C. 19:70-1A.5 establishes and sets forth the functions of the Medicaid Fraud Division (MFD), which continues the functions, powers, and duties formerly performed by the Office of the Medicaid Inspector General, and conducts, coordinates, and supervises State government activities related to Medicaid fraud, waste, and abuse, and issues reports with recommendations

and findings.

Proposed amendments at Subchapter 3 relating to the Public Contracting Oversight Division, remove instances of URL addresses and specific dollar thresholds and replaces them with the defined terms “post-award review threshold” and “pre-advertisement review threshold.” Throughout the subchapter, the term “Procurement Division” is proposed to be replaced by “Public Contracting Oversight Division,” to more accurately describe the division. The proposed amendments at N.J.A.C. 19:70-3.1 streamline the contract submission process, to clarify the process for submission of emergency contracts, and to clarify the term “contract.”

N.J.A.C. 19:70-3.2 is proposed for amendment to provide further guidance on determining the value of contracts, including multiyear contracts, cooperative purchasing systems, concession agreements, student transportation contracts, extensions, amendments, and change orders, and to clarify that extensions, amendments, and change orders are subject to pre-advertisement review.

N.J.A.C. 19:70-3.3 is proposed for amendment to clarify the post-award review threshold and process to include additional documents and information required as submission items, including the name of the individual or firm that prepared the solicitation or specifications, evidence of compliance with N.J.A.C. 5:34-7.9, solicitation documents, public notices, attendance sheets, bid tabulations, recommendation of award and resolution or minutes of the governing body, successful bid or proposal, fully executed contract, and final agency decisions.

N.J.A.C. 19:70-3.4 is proposed for amendment to clarify the pre-advertisement review threshold and process and to include additional documents and information added as submission items prior to any advertisement, negotiation, or solicitation, including the proposed solicitation document or request for qualifications and specifications, forms, certifications, affidavits, and

scoring sheets, documents that explain the use or approval of proprietary items pursuant to N.J.A.C. 17:44-3.8, the name of the individual or firm that prepared the solicitation or specifications, and evidence of compliance with N.J.A.C. 5:34-7.9. N.J.A.C. 19:70-3.4 is also proposed for amendment to clarify that contracting units have an ongoing duty to notify the OSC of any addendum or clarification that would materially change the procurement process or award process, and additional information and documents are added as submission items within 20 business days of award, including any addenda to the solicitation, attendance sheets from a pre-bid meeting, evidence of required public notices, bid tabulation sheets, evaluation memorandum or reports, ranking of bidders, successful bid or proposal, recommendation of award, resolution of minutes of the governing body, fully executed contract, and bid protest documents.

Proposed new N.J.A.C. 19:70-3.5 establishes the documents and information required for emergency procurements meeting the post-award review threshold, which shall be submitted to the OSC no later than 30 business days after contract award. N.J.A.C. 19:70-3.6 is proposed for amendment to clarify that contracting units have an ongoing duty to notify the OSC of any subsequent addendum or clarification that would change the bid or award process set forth in a waiver request and that OSC is not obligated to grant waiver requests.

Existing N.J.A.C. 17:44-3.6 is proposed for repeal.

N.J.A.C. 19:70-3.7 is proposed for amendment to include that contracting units shall submit to OSC third-party contracts meeting the pre-advertisement review threshold no later than 30 days prior to issuance, including the specific documents listed, as applicable. Notice for third-party contracts meeting the post-award review threshold shall be submitted in accordance with N.J.A.C. 19:70-3.3(a).

N.J.A.C. 19:70-3.8 is proposed for amendment to include State contract purchases,

insurance contracts, and competitive contracting, that the additional documents and information noted shall be required for contracts meeting the post-award review threshold or pre-advertisement review threshold, as applicable, that a contracting unit making a purchase from a State contract must demonstrate compliance with contracting procedures set forth in that State contract, that a contracting unit utilizing a nationally recognized cooperative contract shall submit documents supporting the anticipated cost savings, a copy of the cooperative contract, any agreements, and evidence of a competitive selection process, that for insurance contracts, a contracting unit must submit its insurance broker contract, and that for competitive contracting, a contracting unit shall provide the governing body resolution authorizing use of competitive contracting, published notice of contract award, certification of no conflict of interest, and approval by the Director of Local Government Services, as applicable.

N.J.A.C. 19:70-3.9 is proposed for amendment to address the State Comptroller's determination of information submitted for a contract review as a public record. The State Comptroller may provide notice to the public and the contracting unit of any violation of laws; prior to making any written determination public, the contracting unit will be provided an opportunity to comment on a confidential draft or provide additional documentation or information.

N.J.A.C. 19:70-3.11 is proposed for amendment to clarify that a contracting unit may not proceed with a procurement process meeting the pre-advertisement review threshold until the contracting unit is provided written notice to proceed by the OSC and that contracting units shall cooperate fully with OSC during the review. Proposed new subsection (c) includes that the OSC may conduct further fact-finding, issue a referral, or issue a letter or report identifying deficiencies or violations of law in the procurement process, which may be made public.

Proposed new subsection (d) includes that the State Comptroller may direct the contracting unit to submit and comply with a corrective action plan or implement a training and/or monitoring program.

Proposed new Subchapter 4 sets forth the rules of the Medicaid Fraud Division (MFD). The Medicaid Fraud Division provides program integrity oversight of the New Jersey Medicaid program and is responsible for detecting and eliminating fraud, waste, and abuse in New Jersey Medicaid.

Proposed new N.J.A.C. 19:70-4.1 sets forth definitions used throughout proposed new Subchapter 4. Proposed new N.J.A.C. 19:70-4.2 permits the MFD to use statistical sampling and extrapolation to calculate overpayment amounts. Proposed new subsections (b) through (g) provide the process and criteria the MFD will use to perform such samplings and extrapolations. Proposed new N.J.A.C. 19:70-4.3 sets forth a six percent interest rate to be charged on overpayments, how interest shall be calculated, and the situations when interest will be tolled or waived. Proposed new N.J.A.C. 19:70-4.4 sets forth the criteria when the MFD may issue civil monetary penalties and the caps on such penalties. Proposed new N.J.A.C. 19:70-4.5 sets forth the criteria when the MFD may issue administrative sanctions against individuals or entities from participating in the New Jersey Medicaid program. Proposed new N.J.A.C. 19:70-4.6 sets forth the subpoena powers of the MFD. Proposed new N.J.A.C. 19:70-4.7 details the timeframe and process to submit additional documents and information to the MFD after the MFD has issued a demand for payment. Proposed new N.J.A.C. 19:70-4.8 sets forth the process for appealing a MFD enforcement action, including fair hearing requests to the Office of Administrative Law.

Proposed new Subchapter 5 sets forth the rules governing the causes, conditions, and procedures applicable to determinations of debarment, suspension, and disqualification in



accordance with Executive Order Nos. 34 (1976) and 189 (1988). Proposed new N.J.A.C. 19:70-5.1 sets forth the purpose and scope of Subchapter 5. Proposed new N.J.A.C. 19:70-5.2 sets forth the definitions to be used at Subchapter 5, as provided in Executive Order Nos. 34 (1976) and 189 (1988). Proposed new N.J.A.C. 19:70-5.3 sets forth the causes for debarment of a person, including commission of a criminal offense, violation of the Federal Organized Crime Control Act of 1970, violation of State or Federal antitrust laws, violation of the Law Against Discrimination, and others. Proposed new N.J.A.C. 19:70-5.4 sets forth the conditions affecting the debarment of a person, including that the debarment is at the discretion and approval of the State Comptroller, unless otherwise required by law, and in the best interests of the State. Proposed new N.J.A.C. 19:70-5.5 sets forth the procedures, period of debarment, and scope of debarment. When seeking to debar a person or his or her affiliates, OSC shall provide written notice and provide an opportunity to be heard. Debarment shall be for a reasonable period of time, not to exceed five years; debarment may be removed or reduced at the discretion of the State Comptroller.

Proposed new N.J.A.C. 19:70-5.6 provides that, in the public interest, a person may be suspended for any cause specified at N.J.A.C. 19:70-5.3. Proposed new N.J.A.C. 19:70-5.7 sets forth the conditions for suspension of a person, including that suspension shall be imposed at the discretion and approval of the State Comptroller and the Attorney General, except as otherwise provided by law, based upon adequate evidence that cause exists or adequate evidence to create a reasonable suspicion that cause exists. Proposed new N.J.A.C. 19:70-5.8 sets forth the procedures, period of suspension, and scope of suspension. When seeking to suspend a person or his or her affiliates, upon approval of the Attorney General, the OSC shall provide written notice and provide an opportunity to be heard. A suspension shall not continue beyond 18 months from

its effective date, unless civil or criminal action regarding the alleged violation have been initiated or unless debarment action has been initiated.

Proposed new N.J.A.C. 19:70-5.9 describes the prohibited activities of persons in their dealings with the OSC to avoid conflicts of interest and ensure all persons meet a standard of responsibility. Proposed new N.J.A.C. 19:70-5.10 sets forth that the exclusion from contracting with the OSC by virtue of debarment, suspension, or disqualification shall extend to all OSC contracting and subcontracting; however, an exception from total exclusion may be made if the State Comptroller determines it essential to the public interest and files a finding thereof with the Attorney General. Proposed new N.J.A.C. 19:70-5.11 states that, insofar as practicable, the State Comptroller shall give prior notice of any proposed debarment or suspension to the Attorney General and the State Treasurer. Proposed new N.J.A.C. 19:70-5.12 provides that the State Comptroller shall supply the State Treasurer a list of all persons having been debarred, suspended, or disqualified, which shall be available for public inspection at all times. Proposed new N.J.A.C. 19:70-5.13 clarifies that none of the rules in Subchapter 5 shall be construed to limit the authority of the State Comptroller to refrain from contracting within the discretion allowed by law.

### **Social Impact**

The OSC believes that the rules proposed for readoption with recodifications, amendments, new rules, and a repeal will have a positive social impact upon the general public by setting forth clear standards of practice to make government more efficient, transparent, and accountable.

As to the social impact of proposed new Subchapter 4, the rules will provide the Medicaid provider community with information regarding the MFD's enforcement practices and policies. This includes how the MFD selects samples for review, calculates extrapolated overpayments, determines interest on overpayments, assesses civil penalties, and evaluates possible grounds for penalties and administrative sanctions. Proposed new N.J.A.C. 19:70-4.6 describes the MFD's subpoena powers. Proposed new N.J.A.C. 19:70-4.7 will provide a definitive timeline for parties to submit additional information and documentation after receiving that MFD's findings, which should lead to faster dispositions of investigations, audits, and reviews. Proposed new N.J.A.C. 19:70-4.8 provides parties with the procedure and timeframe to request fair hearings to appeal an MFD enforcement action.

The OSC anticipates that proposed new Subchapter 4 will provide the Medicaid provider community with a greater understanding of the MFD's enforcement practices, which will lead to greater compliance with Medicaid statutes and rules while reducing fraud, waste, and abuse in the Medicaid system. By reducing fraud, waste, and abuse, the OSC expects that proposed Subchapter 4 will lead to greater compliance with Medicaid requirements and financial savings for the New Jersey Medicaid program.

### **Economic Impact**

With the exception of proposed new Subchapter 4, the OSC anticipates there will be no economic impact, as additional funding is not necessary to implement the requirements of the rules proposed for readoption with recodifications, amendments, new rules, and a repeal.

Proposed new Subchapter 4 includes rules that set forth how the MFD may extrapolate an overpayment amount, charge interest on an overpayment, and issue civil monetary penalties.

Accordingly, proposed new Subchapter 4 will have an economic effect on Medicaid providers that violate substantive Medicaid statutes and rules. The OSC notes that providers that commit Medicaid fraud, waste, and/or abuse constitute a minority of the overall Medicaid provider community. Accordingly, the economic impact of proposed Subchapter 4 on the regulated community at large should be minimal.

The OSC believes this economic burden on those who do not satisfy Medicaid requirements is salutary and will bring with it two important economic benefits. First, by reminding the Medicaid provider community of the MFD's statutory powers and long-standing enforcement practices, the proposed new rules will deter bad actors from engaging in fraud, waste, and abuse, which, in turn, will protect the taxpayer-funded Medicaid program. Second, the MFD will utilize the proposed new rules to recover greater sums of money from bad actors in a timelier manner, thereby mitigating the economic damage to the New Jersey Medicaid program.

The OSC does not anticipate that proposed new Subchapter 4 will lead directly to any additional costs on the Medicaid provider community. These rules do not provide for any additional obligations or responsibilities; substantive Medicaid rules are promulgated by the New Jersey Division of Medical Assistance and Health Services (DMAHS) and can be found at N.J.A.C. 10:49.

The OSC does not expect to incur costs to implement the proposed new rules, as proposed new Subchapter 4 largely adopts longstanding agency practices and statutory powers set forth pursuant to the Medicaid Program Integrity and Protection Act, N.J.S.A. 30:4D-53 et seq.

The OSC anticipates that the proposed new rules regarding charging interest and issuing civil monetary penalties may lead to additional revenue, but such revenue cannot be quantified at this time due to the uncertainty surrounding the degree of compliance with substantive Medicaid requirements.

### **Federal Standards Statement**

With the exception of proposed new Subchapter 4, the rules proposed for readoption with recodifications, amendments, new rules, and a repeal are not mandated by Federal law and do not contain standards comparable to any Federal standards. Accordingly, no further analysis is required.

Proposed Subchapter 4 sets forth rules governing the MFD, which performs program integrity oversight of the New Jersey Medicaid program. Medicaid is a Federally created, State-implemented program that provides medical assistance to the poor at the expense of the public taxpayers. See Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 et seq.; see also the Medical Assistance and Health Services Act, N.J.S.A. 30:4D-1 et seq. Substantive Federal and State laws, rules, regulations, and guidance for the Medicaid program are promulgated by the Centers for Medicare and Medicaid Services (CMS) and DMAHS, respectively.

Proposed new Subchapter 4 will not impose additional requirements on the New Jersey Medicaid provider community. Rather, proposed new Subchapter 4 provides information regarding the enforcement practices and statutorily authorized enforcement powers of the MFD to oversee the integrity of the New Jersey Medicaid program. Accordingly, a Federal standards analysis is not required.

### **Jobs Impact**

The OSC does not expect that any jobs will be generated or lost in the State as a result of the rules proposed for readoption with recodifications, amendments, new rules, and a repeal.

### **Agricultural Industry Impact**

The rules proposed for readoption with recodifications, amendments, new rules, and a repeal will have no impact on the agriculture industry in the State.

### **Regulatory Flexibility Analysis**

In accordance with N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act, the OSC has determined that the rules proposed for readoption with recodifications, amendments, new rules, and a repeal will not have an impact on reporting, recordkeeping, or compliance requirements of businesses of any size, as defined in the Regulatory Flexibility Act. Accordingly, no further analysis is required.

### **Housing Affordability Impact Analysis**

In accordance with N.J.S.A. 52:14B-4, the OSC has determined that the rules proposed for readoption with recodifications, amendments, new rules, and a repeal will not have an impact on the average costs associated with housing in the State or on the affordability of housing in New Jersey as the rules pertain to the functions of the Office of the State Comptroller. Accordingly, no further analysis is required.

### **Smart Growth Development Impact Analysis**

In accordance with N.J.S.A. 52:14B-4.1b, the OSC has determined that the rules proposed for readoption with recodifications, amendments, new rules, and a repeal will not have an impact on housing production in Planning Areas 1 or 2, or within designated centers, as the rules pertain to the functions of the Office of the State Comptroller. Accordingly, no further

analysis is required.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The OSC has determined that the rules proposed for readoption with recodifications, amendments, new rules, and a repeal will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:44.

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

## CHAPTER [44] **70**

### **OFFICE OF THE STATE COMPTROLLER RULES**

#### SUBCHAPTER 1. OFFICE OF THE STATE COMPTROLLER

[17:44]**19:70-1.1** [Purpose] **Authority, purpose,** and scope

**(a) This chapter is promulgated pursuant to the authority of the Office of the State Comptroller (OSC), N.J.S.A. 52:15C-1 et seq.**

[(a)] **(b)** The rules in this chapter set forth the organization [and function] of **the OSC[,] and** explain [the audit process and specify the documents and information required of contracting units subject to contract review] **its functions pertaining to: the routine, periodic, and random audits and performance reviews of State agencies and all entities exercising**

**executive branch authority; the oversight of public contracting to guard against fraud, waste, and abuse; the investigation of the management and expenditure of public funds; assessments of the performance and management of programs and the extent to which they are achieving their goals and objectives; and oversight of the Medicaid program.**

[(b)] (c) The provisions of this chapter apply to [all] covered entities and contracting units [as defined in N.J.A.C. 17:44-1.2].

**(d) OSC’s powers, functions, and duties are established pursuant to N.J.S.A. 52:15C-1 et seq., 52:15B-1 et seq.; and the Medicaid Program Integrity and Protection Act, N.J.S.A. 30:4D-53 through 64. The Office of the Inspector General created pursuant to N.J.S.A. 52:15B-1 et seq., was abolished and all of its functions, powers, and duties were transferred to, and established within, the OSC, pursuant to N.J.S.A. 52:15C-21. The Office of the Medicaid Inspector General created pursuant to N.J.S.A. 30:4D-53 et seq., was abolished and all of its functions, powers, and duties were transferred to, and established within, the OSC, pursuant to N.J.S.A. 52:15C-23. The OSC carries out its powers, functions, and duties through its divisions and projects.**

[17:44]19:70-1.2 Definitions

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

**“Audit Division” means the division within the OSC that is responsible for reviewing the performance of covered entities and conducting audits in accordance with Generally Accepted Government Auditing Standards issued by the U.S. Government Accountability Office.**



...

“Contract” means an agreement supported by consideration and enforceable at law **and any amendments, extensions, modifications, or change orders thereto, or renewals thereof.**

Examples include, but are not limited to: grants supported by consideration, purchases of goods or services, leases, concession agreements, agreements for sale, loan agreements, agreements with entities to indemnify or insure, agreements to join certain shared service agreements, including joint insurance funds, brokerage agreements, land transactions (excluding land condemnations), certain memoranda of understanding, purchase orders, and [third party] **third-party** contracts.

...

“Cooperative [purchasing agreement] **contract**” means [the extension of] a contract [entered into by a contracting unit] for the use and benefit of other contracting units, such as pursuant to N.J.S.A. 52:34-6.2 or 40A:11-11(6) **or N.J.A.C. 5:34-7.**

...

“Emergency procurement” means a contract entered into [under] **pursuant to** an emergency condition that is a threat to public health, welfare, or safety **and requires the immediate performance of services or delivery of goods.**

...

“Investigations Division” means **the division within the OSC that detects and uncovers misconduct, fraud, waste, and abuse at all levels of New Jersey government, including all entities exercising executive branch authority, public institutions of higher education, independent State authorities, units of local government, and boards of education through investigations, evaluations, inspections, and other reviews.**

**“Medicaid” or “Medicaid program” means the New Jersey Medicaid program established pursuant to the New Jersey Medical Assistance and Health Services Act, N.J.S.A. 30:4D-1 et seq., the NJ FamilyCare program established pursuant to the Family Health Care Coverage Act, N.J.S.A. 30:4J-8 et seq., the New Jersey Charity Care program established pursuant to the Health Care Facilities Planning Act, N.J.S.A. 26:2H-18.51 et seq., and other related programs administered by the Department of Human Services and coordinate State agencies.**

**“Medicaid Fraud Division” (MFD) means the division within the OSC that works to protect the integrity of New Jersey’s Medicaid program. The Medicaid Fraud Division reviews State oversight, as well as contracted vendor oversight, of the Medicaid program to identify vulnerabilities, recover misspent funds, and recommend program integrity enhancements. In addition, the MFD suspends/excludes Medicaid providers, as warranted, and, on its own behalf and through third-party vendors, audits, investigates, and reviews Medicaid health care providers to detect fraud, waste, and abuse in the Medicaid program and recover funds that are improperly paid.**

...

**“Post-award review threshold” means the dollar amount, established in consultation with the Department of the Treasury, of contracts that must be submitted to the OSC pursuant to N.J.S.A. 52:15C-10.a. Effective July 1, 2020, the post-award review threshold is \$2.5 million or greater, but less than \$12.5 million. Review thresholds are adjusted in accordance with N.J.S.A. 52:15C-10.d.**

**“Pre-advertisement review threshold” means the dollar amount, established in consultation with the Department of the Treasury, of contracts that must be submitted to**

**the OSC pursuant to N.J.S.A. 52:15C-10.b. Effective July 1, 2020, the pre-advertisement review threshold is \$12.5 million or greater. Review thresholds are adjusted in accordance with N.J.S.A. 52:15C-10.d.**

“Procurement process” means any method used to obtain goods or services, land, leaseholds, or concessions and includes, but is not limited to: bidding, competitive contracting, negotiations, requests for proposals, expressions of interest, requests for qualifications, requests for offerings or quotes, **or the waiver of, or other exception to, an advertising process.**

“Project” means any special undertaking, unit, or bureau that may be created from time to time as determined by the State Comptroller to serve a distinct purpose by carrying out the duties and functions of the OSC and fulfilling its responsibilities as set forth by law, executive order, directive, or other similar authority.

...

“Public Contracting Oversight Division” means the division within the OSC responsible for the oversight, review, and monitoring of procurements by contracting units to safeguard public money, deter corruption and favoritism, and encourage competition.

...

[“Third party contract” means a contract between two or more parties, the performance of which is intended to benefit directly a third party. Examples include Department of Human Services (DHS) contracts with a vendor to provide services for non-employees of DHS eligible for those services and Department of Corrections (DOC) contracts with a vendor to provide services for prisoners in halfway houses.]

**“Third-party contract” means a contract between a State entity and a third-party provider pursuant to the Attorney General formal opinion No. 21 (July 22, 1976) to provide services to private individuals, who are eligible for public assistance or are medically indigent, to defray the costs thereof. Examples of services covered by a third-party contract include: payments for hospital and convalescent care centers, foster care, nursing homes, and professionals providing services for clients of State agencies where the agency itself is neither the consumer of the service, nor the receiver of direct benefits associated with such services.**

#### **19:70-1.3 Public notice of rulemakings**

**(a) The OSC shall make available on its website all notices of rulemaking activity and public hearing information, as applicable, pursuant to N.J.S.A. 52:14B-3. The OSC shall distribute such notices through its electronic mailing list in accordance with N.J.S.A. 52:14B-4.**

**(b) The OSC shall publish all notices of proposal on its website, which shall constitute its “other secondary notice” as required pursuant to N.J.A.C. 1:30-5.2(a)6ii(4)(A).**

#### **19:70-1.4 Opportunity to be heard; petitions and public hearings for rulemaking**

**(a) The OSC shall provide a 60-day period from the publication of a notice of proposal for the receipt of comments related to the proposal. The OSC shall provide an additional 30-day period for the receipt of comments on a notice of proposal if sufficient public interest is demonstrated within the initial comment period. Public interest in the extension of a comment period shall be sufficient if:**

1. At least 100 persons submit written requests to extend the comment period; and
2. A majority of the comments submitted pose an objection to the notice of proposal.

**(b) The OSC shall conduct a public hearing on a notice of proposal if, within 30 days following publication of the notice of proposal in the New Jersey Register:**

1. A public hearing is requested by a committee of the Legislature;
2. A public hearing is requested by a governmental agency or subdivision; or
3. Sufficient public interest in a public hearing is demonstrated, as set forth at ©

below.

**(c) The State Comptroller shall determine whether sufficient public interest in holding a public hearing has been demonstrated based on a review of written requests submitted to the address to which comments are to be sent, as stated in the notice of proposal. Public interest in holding a public hearing shall be sufficient if:**

1. At least 100 persons submit written requests to hold a public hearing to present data, arguments, or views that raise a substantial issue as to the impact of the notice of proposal on the regulated community or the general public that has not been anticipated by the OSC; and

2. No other public hearing on the notice of proposal has been scheduled or held by the OSC pursuant to this section or other applicable law or rule.

**(d) Written comments submitted pursuant to (a) above do not constitute a request for a public hearing, unless a specific request for a hearing is included. A specific request for a hearing shall include the basis for the hearing request.**

**(e) For the purposes of (a)1 and (c)1 above, a professional organization or law firm that submits a request on behalf of a group of interested parties shall be considered one person.**

**(f) Any public hearing held pursuant to (a) above shall be conducted consistent with the requirements at N.J.A.C. 1:30-5.5. The OSC may, but shall not be required to, hold more than one public hearing on any notice of proposal.**

**(g) A petition for the OSC to adopt a new rule, or amend or repeal an existing rule, shall be submitted, in writing, addressed to the State Comptroller and, at a minimum, include:**

- 1. Name of the petitioner;**
- 2. Date;**
- 3. The rule to be amended or repealed or, if a new rule, the nature of the proposed new rule;**
- 4. OSC's statutory authority to amend, repeal, or adopt the proposed rule;**
- 5. A narrative statement explaining the need for the amendment, repeal, or proposed rule.**

**(h) Within 60 days of the receipt of a petition for rulemaking submitted in accordance with (g) above, the State Comptroller shall consider the merits of the petition and issue a determination that includes one of the following actions:**

- 1. Denial. If a petition for rulemaking is denied, the OSC shall provide the petitioner with the reasoning for the denial and include such explanation in its notice of action;**
- 2. Granting the petition and initiating a rulemaking proceeding within 90 days, unless the petitioner and the OSC agree, in writing, to a longer period of time; or**
- 3. Referral of the petition for further consideration. If a petition for rulemaking is referred, the OSC shall provide the petitioner with the reasoning for the referral and include such explanation in its notice of action. A referral shall conclude within 90 days of**

the referral, unless the petitioner and the OSC agree, in writing, to a longer period of time, at which time OSC shall deny or grant the petition.

(i) Any notice of action pursuant to (g) above shall be consistent with the filing and publication requirements at N.J.A.C. 1:30-4.2.

#### **19:70-1.5 Records designated confidential**

(a) In addition to records designated as exempt from disclosure pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq.:

1. Any record, as defined at N.J.S.A. 47:1A-1.1, obtained by, or from, the OSC during the course of:
  - i. An audit pursuant to N.J.S.A. 52:15C-5, 7, and 8 and 30:4D-57 and 60;
  - ii. An investigation pursuant to N.J.S.A. 52:15B-7, 8, and 9; 52:15C-9(a); and 30:4D-53, 54, 60, 61, and 62;
  - iii. An evaluation pursuant to N.J.S.A. 52:15B-8;
  - iv. An inspection pursuant to N.J.S.A. 52:15B-8 and 30:4D-57.c(10);
  - v. A request for assistance and cooperation, including surveys, pursuant to N.J.S.A. 52:15C-14;
  - vi. A request for information pursuant to N.J.S.A. 52:15C-6 and 14 and 30:4D-61;
  - vii. A performance review pursuant to N.J.S.A. 52:15C-7 and 8 and 30:4D-60;
  - viii. A contract review pursuant to N.J.S.A. 52:15C-10; or

**ix. Other reviews;**

**2. A complaint or referral to or by the OSC and the identity of the complainant;**

**3. Information communicated for notice and review by or between covered entities or contracting units and the OSC, except for written determinations designated by the State Comptroller as public records;**

**4. Any preliminary or draft report or letter issued to a covered entity or contracting unit, the final report of which shall be a public record; and**

**5. Work papers, memoranda reports, plans, or other records that are made, maintained, or kept as part of any investigation, audit, or contract review by the OSC.**

**(b) If a person requests access to a government record that the OSC obtained from another public agency during the course of an audit, investigation, performance review, or contract review, and such record was open for public inspection, examination, or copying before the audit, investigation, or review by the OSC, then the public entity from which the OSC obtained the record shall comply with the request if made pursuant to N.J.S.A. 47:1A-1 et seq., and (c) below.**

**(c) In order to preserve confidentiality in accordance with N.J.S.A. 52:15C-14, the public agency that receives a request which in any way identifies the record sought by means of a reference to the State Comptroller's audit, review, or investigation, or a subpoena issued pursuant to such investigation, the public agency's response shall not disclose the existence of the State Comptroller's request for such document.**

[17:44-2.2] **19:70-1.6** Authority to audit or review contract records

(a) Relevant records of private vendors or other persons entering into contracts with covered



entities are subject to audit or review by **the** OSC pursuant to N.J.S.A. 52:15C-[14(d)]**14.d.**

**1. Vendors, contractors, and other persons entering into contracts with covered entities should exercise sound business judgment in preserving documentation and data, which include, at a minimum, contract documents, purchase orders, and change orders.**

(b) [As of November 15, 2010, all] **All** covered entities shall insert the following language in any new contract:

“(The contract partner) shall maintain all documentation related to products, transactions, or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.”

#### **SUBCHAPTER 1A. ORGANIZATIONAL RULES**

[17:44-1.3] **19:70-1A.1** Independent Office of the State Comptroller

(a) **The OSC is an independent office that reports directly to the Governor. Allocated in, but not of, the New Jersey Department of the Treasury[. As such, it operates as an], the OSC is independent [Office that] of any supervision or control by the State Treasurer. The OSC promotes the integrity and transparency of government operations by, among other things, reviewing public contracts, investigating allegations of fraud, waste, and abuse at all levels of New Jersey government, including all entities exercising executive branch authority, public institutions of higher education, independent State authorities, units of local government, and boards of education, and conducting [independent] audits of covered entities in accordance with Generally Accepted Government Auditing Standards. In addition, the OSC conducts investigations and audits concerning fraud, waste, and abuse in the Medicaid**

**program in accordance with N.J.S.A. 52:15C-23. The OSC's work is carried out by divisions and projects in accordance with its statutory powers.**

(b)-(c) (No change.)

[17:44-1.4] **19:70-1A.2** Establishment and functions of the Audit Division

(a) There is established within **the** OSC an Audit Division. The Audit Division, among other functions, conducts research and performs preliminary evaluations [which] **that** may lead to recommendations regarding the need for an audit; conducts performance audits of the Executive Branch of State government, including all entities exercising executive branch authority, public institutions of higher education, and independent State authorities **and their vendors**; and conducts performance audits of local government units and boards of education. **The Audit Division may issue public letters or reports based on its findings.**

(b)-(c) (No change.)

[17:44-1.5] **19:70-1A.3** Establishment and functions of the [Procurement] **Public Contracting Oversight** Division

(a) There is established within **the** OSC a [Procurement] **Public Contracting Oversight** Division. The [Procurement] **Public Contracting Oversight** Division monitors, [and] reviews, **and provides guidance on** the solicitation and award process for contracts under **the** OSC's jurisdiction to ensure **competition, transparency, public confidence in government, avoidance of favoritism, and** that [those] **procurement** processes comply with applicable public contracting laws, rules, regulations, and policies **including, but not limited to, State contracting laws, N.J.S.A. 52:32-1 et seq., 52:33-1 et seq., and 52:34-1 et seq., Local Public**

**Contracts Law, N.J.S.A. 40A:11-1 et seq., Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., and State College Contracts Law, N.J.S.A. 18A:64-52 et seq.** The [Procurement] **Public Contracting Oversight** Division provides guidance, in the context of its reviews, to contracting units [regarding appropriate] **to correct deficiencies in contracts prior to advertisement and to ensure future contracts comply with applicable** procurement processes.

(b) In response to [specific] complaints, [audit] referrals, [or] **and** contract reviews, **the** OSC may investigate to gather additional information regarding the procurement process, contract award process, and financial management and performance of contracting units, **and may issue public letters or reports based on these findings.**

#### **19:70-1A.4 Establishment and functions of the Investigations Division**

(a) **There is established within the OSC an Investigations Division. The Investigations Division investigates allegations of fraud, waste, and abuse concerning all levels of New Jersey government, including all entities exercising executive branch authority, public institutions of higher education, independent State authorities, units of local government, and boards of education, for the purpose of promoting integrity, efficiency, accountability, and transparency in the administration and operation of New Jersey government.**

(b) **Among other activities, the Investigations Division monitors the performance and investigates the conduct of elected officials, individual governmental officers, public employees, appointees, and programs; uncovers waste and misconduct involving public funds; assesses the performance and management of programs and the extent to which they are achieving their goals and objectives; and releases reports and letters that contain its findings and recommendations. The Investigations Division conducts investigations,**

evaluations, inspections, and reviews in accordance with the Principles and Standards for Offices of Inspector General issued by the Association of Inspectors General.

**19:70-1A.5 Establishment and functions of the Medicaid Fraud Division**

There is established within the OSC a Medicaid Fraud Division. The Medicaid Fraud Division shall continue the functions, powers, and duties that were formerly performed by the Office of the Medicaid Inspector General, created pursuant to the Medicaid Program Integrity and Protection Act, N.J.S.A. 30:4D-53 et seq., and abolished pursuant to N.J.S.A. 52:15C-23. The Medicaid Fraud Division conducts, coordinates, and supervises State government activities relating to Medicaid fraud, waste, and abuse, and issues reports with recommendations and findings. Pursuant to N.J.S.A. 26:2H-18.60d, the Medicaid Fraud Division also may investigate claims related to charity care and recover monies from third-party payers that were paid as Charity Care subsidies.

SUBCHAPTER 2. AUDIT DIVISION

Recodify existing 17:44-2.1 and 2.3 through 2.8 as **19:70-2.1 through 2.7** (No change in text.)

SUBCHAPTER 3. [PROCUREMENT] **PUBLIC CONTRACTING OVERSIGHT**  
DIVISION

[17:44]**19:70-3.1** Timely notice of certain contracts required

(a) Contracting units shall notify the [Procurement] **Public Contracting Oversight** Division of the award of contracts [valued at more than \$2 million but less than \$10 million] **meeting the post-award review threshold** no later than 20 business days after the contract award. [The]

**Contracting units shall utilize the form for notice [is] provided on the OSC's website [at [www.state.nj.us/comptroller](http://www.state.nj.us/comptroller)].**

(b) Contracting units shall notify the [Procurement] **Public Contracting Oversight** Division of [anticipated] **any procurement process or** contract[s valued at \$10 million or more during the initial planning stages of the procurement process and before the contracting unit begins to draft the solicitation, request for proposals, concession offering, proposal to purchase, sell or lease real estate or similar contract-related documents, and in] **meeting the pre-advertisement review threshold** no [event] less than 30 days prior to any advertisement[, negotiation] **of a bid** or other solicitation **or award of a negotiated contract.**

(c) For procurements [valued at \$10 million or more] **meeting the pre-advertisement review threshold, the** OSC's 30-day review period commences when the contracting unit provides, or otherwise makes available, all requested documents and information as prescribed [in] **at** N.J.A.C. [17:44]19:70-3.4. [The] **Contracting units shall utilize the form for notice [is]** provided on OSC's website [at [www.state.nj.us/comptroller](http://www.state.nj.us/comptroller)].

**(d) Contracting units shall notify the Public Contracting Oversight Division of an emergency procurement meeting the post-award review threshold no later than 30 business days after the contract award.**

[(d)] (e) For **anticipated** procurements in which multiple contracting units are involved, such as joint **purchasing agreements** or cooperative [agreements] **contracts** for goods or services [pursuant to N.J.S.A. 40A:11-10 et seq.], the contracting unit[s] shall designate an individual to [represent all of the contracting units involved. The designated individual shall] notify the [Procurement] **Public Contracting Oversight** Division [of the procurement] **pursuant to this subchapter** and provide all necessary documents and information.

[(e)] **(f)** Contracting units shall provide the required **notice**, documents, and information electronically[, if possible, to [contracts@osc.state.nj.us](mailto:contracts@osc.state.nj.us) or via mail to State of New Jersey, Office of the State Comptroller, 20 West State Street, P.O. Box 024, Trenton New Jersey 08625-0024] **in accordance with the directions provided on the OSC's website**. If documents are too large to send electronically or [via mail, contracting units may provide the staff of] **are not available electronically, please contact** the [Procurement] **Public Contracting Oversight** Division [with the location at which the documents may be inspected] **for alternative means of submission**.

**(g) As used in this subchapter, the term contract:**

**1. Shall not include collective bargaining agreements, developer(s) agreements entered into in conjunction with an approval granted pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., redevelopment agreements entered into pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., financial agreements entered into pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., agreements entered into pursuant to the Five-Year Exemption and Abatement Law, N.J.S.A. 40A:21-1 et seq., agreements entered into pursuant to N.J.S.A. 54:4-3.145, agreements entered into pursuant to N.J.S.A. 58:10B-26 through 58:10B-31, and agreements entered into pursuant to the Municipal Landfill Site Closure, Remediation and Redevelopment Act, N.J.S.A. 13:1E-116.1 et seq.;**

**2. Shall include contracts for the purchase, sale, transfer, or lease of real estate;**

**3. Shall include other related activities or contracts that exceed the pre-advertisement review threshold; and**

**4. Shall include any procurement process subject to executive order. Such executive order may modify or supplement the pre-advertisement review threshold or post-award review threshold and timeframes for OSC review.**

[17:44]19:70-3.2 [Process by which contracting units shall determine] **Determining** the value of contracts[; notice required when the value of contract changes]

(a) When the exact value of a contract is uncertain, contracting units shall act in good faith to ascertain an estimated value. [using the following guidelines:

1.] The individual(s) responsible for the procurement shall use professional judgment based on, but not limited to, prior procurements made by the contracting unit for similar goods, [or] services, **or construction work.**

[2.] **(b)** The contract value is **the total estimated value of a contract. For a multiyear contract, the contract value is** calculated [as a whole, that is,] **by multiplying** the number of **base years (excluding renewal terms)** times the yearly amount **of the contract.** Although potential contract extensions, **amendments, or change orders** are not included in [calculating the contract value at the time of estimating total contract value or at the time of the award] **this calculation,** if an extension, **amendment, or change order** itself [exceeds \$2 million, then] **meets the post-award review threshold,** notice is required [at the time of extension,] **pursuant to N.J.A.C. 19:70-3.1(a). If an extension, amendment, or change order meets the pre-advertisement review threshold, notice is required pursuant to N.J.A.C. 19:70-3.1(b).**

[3. Notice is required for change orders if the value of the particular change order exceeds \$2 million.]

**(c) If multiple contracts are to be awarded through a single procurement process, the contracting unit shall determine the total estimated contract value by adding together the estimated value of each contract. Notice shall be provided to OSC pursuant to this subchapter.**

**(d) For cooperative purchasing systems established pursuant to N.J.A.C. 5:34-7, the contract value shall be based on the estimated quantities to be purchased submitted by registered members as provided at N.J.A.C. 5:34-7.9(c) and projected use(s) based on prior purchases.**

**(e) For concession agreements, the contract value shall be based on the estimated revenue to be earned by the concessionaire for the base term of the contract.**

**(f) For student transportation contracts, the value shall be based on the estimated value of all routes included in any single procurement process in accordance with N.J.S.A. 18A:39-3.**

[17:44]19:70-3.3 Documents and information required for contracts [valued at more than \$2 million but less than \$10 million] **meeting the post-award review threshold**

(a) [Contracting units shall notify the Procurement Division of] **For** contracts [valued at more than \$2 million but less than \$10 million] **meeting the post-award review threshold and reviewed on a post-award basis, the contracting unit shall provide the OSC with the following documentation and information** no later than 20 business days after the contract award[. The], **using the** form for notice [is] provided on **the** OSC's website [at [www.state.nj.us/comptroller](http://www.state.nj.us/comptroller). The following documents and information shall be required]:

1.-7. (No change.)



8. The name and address of the contract partner awarded the contract and a brief justification for the award; [and]

9. The name, phone number, and [e-mail] **email** address of the employee of the contracting unit capable of responding to questions pertaining to the contract[.];

**10. If other than the contracting unit, the name of an individual or firm that prepared or assisted with the preparation of the solicitation or specifications; and**

**11. For cooperative pricing systems established pursuant to N.J.A.C. 5:34-7, all documents that evidence the lead agency's compliance with the requirements at N.J.A.C. 5:34-7.9.**

(b) The following documents and information [are to] **should** be [produced only if specifically requested by OSC] **submitted with the notice at (a) above. If not submitted with the notice, such items shall be submitted within 10 days of an OSC request:**

[1. A copy of the signed, executed contract, addenda to the solicitation and the resolution awarding the contract or minutes approving the contract award, if applicable;]

**1. A copy of the solicitation document issued by the contracting unit, including, at a minimum, an invitation to bidders, request for proposal, or request for qualifications, along with specifications (blue prints and drawings are not required), terms and conditions, and addenda issued thereto;**

2. A complete list of bids or proposals received and the name and address of each bidder, vendor, or competitor;

**3. Evidence of publication of required public notices;**

**4. Attendance sheets from a pre-bid meeting, if applicable;**

**5. Bid tabulation sheets, evaluation memorandum, and/or ranking of bidders, as applicable;**

**6. Recommendation of award and resolution or minutes of the governing body approving the contract award, as applicable;**

**7. A copy of the successful bid or proposal, including any forms, certifications, and/or affidavits signed by the contract partner;**

**8. A copy of the fully executed contract;**

[3.] **9. Any documents explaining [and] or approving a waiver [from] of bidding requirements [and];**

**10. Any documents explaining [and] or approving the use of proprietary items, as required at N.J.A.C. 19:70-3.8; and/or**

[4.] **11. Copies of any pre-award or post-award bid protests and any [decisional] relevant documents, [that arise as a result of the protests; and/or] including final agency decisions.**

[5. Standard specifications, technical specifications, special terms and conditions and standard terms and conditions, for example, affidavits and affirmative action documents].

**(c) If requested by the OSC, contracting units shall provide any additional documents within 10 days of the request.**

[17:44] **19:70-3.4** Documents and information required for contracts [valued at \$10 million or more] **meeting the pre-advertisement review threshold**

(a) [Contracting units shall notify the Procurement Division of] **For** contracts [valued at \$10 million or more] **meeting the pre-advertisement review threshold and submitted for pre-advertisement review, the contracting unit shall submit to the OSC, at least 30 days prior to**

any advertisement, negotiation, or solicitation[. The], **the following information and documents using the form** for notice [is] provided on OSC's website [at [www.state.nj.us/comptroller](http://www.state.nj.us/comptroller). The following documents and information shall be required]:

1. (No change.)
2. A description of the goods, services, or other subject to be procured;
3. The estimated cost of the goods, services, or other subject to be procured and any documents evidencing how the estimated cost was obtained, such as a construction cost estimate or other cost analysis;
4. The estimated date of advertisement, negotiation, or other solicitation;
- 5.-7. (No change.)
8. Citations to all relevant statutory, administrative, and other sources of governing law and internal procurement policies;
9. A copy of the [draft procurement documents such as the] **proposed solicitation document, including the advertisement, invitation to bidders, [or] request for proposals [and any subsequent addenda or clarification that would change the bid or award process], or request for qualifications in final form, along with any specifications (blue prints and drawings are not required), terms and conditions, forms, certifications, or affidavits to be signed by the bidder, and, if applicable, the scoring sheet for the evaluation of proposals;**
10. Any documents explaining [and] **or** approving a waiver [from] **of or exception to the** bidding requirements [and documents explaining and approving the use of proprietary items];
- [11. Standard specifications, special terms and conditions and standard terms and conditions, for example, affidavits and affirmative action documents; technical specifications only when specifically requested by OSC; and]

**11. Any documents explaining or approving the use of proprietary items, as required at N.J.A.C. 19:70-3.8;**

12. The name, phone number, and [e-mail] **email** address of the employee of the contracting unit capable of responding to questions pertaining to the contract[.];

**13. If other than the contracting unit, the name of an individual or firm that prepared or assisted with the preparation of the solicitation or specifications; and**

**14. For cooperative pricing systems established pursuant to N.J.A.C. 5:34-7, all documents that evidence the lead agency's compliance with the requirements at N.J.A.C. 5:34-7.9.**

**(b) A contracting unit shall have an ongoing duty to notify the OSC of any addendum or clarification that would materially change the procurement process or award process following the OSC review, but before the contracting unit's receipt of bids, proposals, or quotes.**

[(b)] **(c)** Upon [the completion of the bidding process and] the award of a contract [valued at \$10 million or more] **meeting the pre-advertisement review threshold**, contracting units shall provide the following additional documents and information to the [Procurement] **Public Contracting Oversight** Division within 20 business days of the award[, notwithstanding OSC review prior to the advertisement, negotiation, or other solicitation]. [The form] **Directions** for notice [is] **are** provided on **the** OSC's website [at [www.state.nj.us/comptroller](http://www.state.nj.us/comptroller). The following documents and information shall be required unless otherwise noted]:

1. (No change.)
2. The final cost of the goods, services, or other subject procured;

[3. The name and address of the contract partner awarded the contract and a brief justification for the award;

4. A copy of the signed, executed contract, any addenda to the solicitation and the resolution awarding the contract or minutes approving the contract award, if applicable;]

**3. Any addenda to the solicitation;**

**4. Attendance sheets from a pre-bid meeting, if applicable;**

5. A complete list of the bids or proposals received and the name and address of each bidder, vendor, or competitor;

[6. Copies of any pre-award or post-award bid protest and any decisional documents that arise as a result of the protest; and]

**6. Evidence of publication of required public notices;**

**7. Bid tabulation sheets, evaluation memorandum or reports, or ranking of bidders, as applicable;**

**8. A copy of the successful bid or proposal, including any form, certification, or affidavit signed by the contract partner;**

**9. Recommendation of award and resolution or minutes of the governing body approving the contract award, as applicable;**

**10. A copy of the fully executed contract;**

**11. A description of any pre-award or post-award bid protest and any available related documents; and**

[7.] **12.** The name, phone number, and [e-mail] **email** address of the employee of the contracting unit capable of responding to questions pertaining to the contract.

**(d) If requested by OSC, contracting units shall provide any additional documents within 10 days of the request.**

**19:70-3.5 Documents and information required for emergency procurements meeting the post-award review threshold**

**(a) For emergency procurements meeting the post-award review threshold, contracting units shall provide the OSC with the following information and documents no later than 30 business days after the contract award, using the form provided on the OSC's website:**

- 1. The name of the contracting unit and contract number, if applicable;**
- 2. If other than the contracting unit, the name of the individual or firm that prepared or assisted with the preparation of the solicitation or specifications, if applicable;**
- 3. A description of the goods, services, or other subject procured;**
- 4. The cost of the goods, services, or other subject procured;**
- 5. The source(s) of funding for the contract;**
- 6. A list of all State and Federal grant funds used for the contract and a brief description of any conditions and/or requirements of the grant funds, if applicable;**
- 7. Citations to, and any documentation required by, statutory, administrative, and other sources of governing law, and internal procurement policies authorizing the award of an emergency procurement and documentation evidencing any required approvals;**
- 8. The name and address of the contract partner awarded the contract;**
- 9. The name, phone number, and email address of the employee of the contracting unit capable of responding to questions pertaining to the contract;**
- 10. A copy of the fully executed contract;**

**11. Any documents describing the nature of the threat to public health, safety, or welfare and a justification for the immediate need for the goods or services; and**

**12. Resolution or minutes of the governing body or other documentation approving the contract award, as applicable.**

[17:44-3.5] **19:70-3.6** Process by which contracting units may request a waiver of the 30-day review period and **the** OSC response

(a) Contracting units seeking to proceed with an advertisement before the expiration of the 30-day review period shall request a waiver of the time period in writing. Such contracting units shall provide [any] **the** information required [in] **at** N.J.A.C. [17:44]**19:70-3.4(a)** at the time the waiver is requested and the reason for the waiver request. Other documents shall be supplied, as requested.

(b) Contracting units shall **have an ongoing duty to** notify **the** OSC of any subsequent addendum or clarification [which] **that** would change the bid or award process from the process set forth in the documents presented to **the** OSC in support of any waiver request, even if a waiver has been granted.

© **The** OSC [shall] **will** respond to waiver requests in writing; **however, the OSC is not obligated to grant waiver requests.**

[17:44-3.6] Notice, documents and information required of State agencies that procure through the Department of the Treasury, Division of Purchase and Property (DPP)

(a) For procurements valued at \$10 million or more, State agencies that procure through the Department of the Treasury, Division of Purchase and Property (DPP) shall notify the

Procurement Division in writing that they intend to send a request for procurement to DPP as soon as the agency begins preparing specifications or a request for proposals.

- (b) DPP shall submit a notice of the planned procurement to the Procurement Division at least 30 days before advertising in accordance with N.J.A.C. 17:44-3.4.
- (c) The Procurement Division shall notify both DPP and the applicable State agency if the proposed procurement is irregular and the advertisement cannot proceed.
- (d) For contracts valued at more than \$2 million but less than \$10 million, DPP shall notify the Procurement Division no later than 20 business days after the contract award in accordance with N.J.A.C. 17:44-3.3.]

[17:44]19:70-3.7 Notice, documents, and information required for [renewals of] third-party contracts [valued at \$10 million or more]

**(a) For proposed third-party contracts meeting the pre-advertisement review threshold, notice shall be provided by the contracting unit to the Public Contracting Oversight Division no later than 30 days prior to issuance. Notice shall include the following, as applicable:**

- 1. The name of the contracting unit and contract number;**
- 2. The name of the proposed contract partner;**
- 3. The estimated cost of the services and any documents describing how the estimated cost was obtained, such as a cost estimate or other cost analysis;**
- 4. The source(s) of funding;**
- 5. A list of all State and Federal grant funds to be used for the contract and a brief description of any conditions and/or requirements of the grant funds;**



- 6. A description of the services to be provided;**
- 7. The proposed contract in substantially final form; and**
- 8. Any additional information and documentation requested by the OSC.**

[(a)] **(b)** For renewals of third-party contracts [valued at \$10 million or more] **meeting the pre-advertisement review threshold**, notice shall be provided by the contracting unit to the [Procurement] **Public Contracting Oversight** Division no later than 60 days prior to the annual renewal date. Notice shall include the following:

1.-3. (No change.)

4. A copy of the original contract[, if available. If the original contract is not available, provide a brief, written history of the contract].

**(c) For third-party contracts meeting the post-award review threshold, notice shall be provided by the contracting unit as set forth at N.J.A.C. 19:70-3.3(a).**

[17:44]**19:70-3.8** Additional documents and information required for **State contract purchases**, cooperative [purchasing] **contract purchases**, sole source provider or proprietary **contracts**, [emergency and] professional services contracts [valued at more than \$2 million], **insurance contracts, and competitive contracting**

**(a) The additional documents and information set forth below shall be required to be submitted for the following contracts meeting the post-award review threshold or pre-advertisement review threshold, as applicable:**

**1. A contracting unit that purchases goods or services from a State contract allowing for such purchases shall demonstrate compliance with the procedures established in the State contract, if applicable;**

[(a)] **2.** [Contracting units that plan to enter into, or have entered into, a] **A contracting unit shall briefly explain the reasons for using a cooperative** [purchasing agreement valued at more than \$2 million shall submit an award recommendation or briefly explain the reasons for using cooperative] **contract or joint purchasing agreement** and provide documents evidencing any cost analysis conducted[. Governments using the];

**3. A contracting unit that intends to make purchases or contract for services through the use of a nationally recognized cooperative** [purchasing requirements of a state contract need not provide such information.] **contract pursuant to N.J.S.A. 52:34-6.2.b shall submit documents supporting anticipated cost savings, a copy of the national cooperative contract, any agreement between the contracting unit and the vendor, and evidence that the national cooperative contract utilized a competitive selection process;**

[(b)] **4.** [Contracting units that plan to enter into, or have entered into, a] **For sole source** [provider] contracts [or] **and contracts requiring brand name or proprietary** [contract valued at more than \$2 million] **items, contracting units** shall provide documents evidencing the justification for the award, **or use of a brand name or proprietary item**, including [an explanation addressing the lack of other vendors that] **documentation demonstrating that no other vendor** can provide comparable products or services[,], **and any resolution or approval** of the governing body authorizing the use of proprietary **or sole source goods or services** and any completed waiver documentation. When determining if goods or services are sole source, contracting units shall abide by existing laws and rules limiting the use of the sole source exception[, such as N.J.A.C. 5:34-2.2. Contracting units using a waiver from public bidding for contracts valued at \$10 million or more shall provide OSC with a copy of the waiver or resolution prior to contract award or execution.];

[(c) Contracting units that have entered into emergency contracts valued at more than \$2 million shall provide a brief explanation as to why the procurement was classified as an emergency, any related resolution from the governing body and any completed waiver.]

[(d)] **5.** In any type of procurement for which an evaluation committee is appointed, [including procurements for professional services and procurements using competitive contracting,] a contracting unit shall [maintain] **provide** the list of persons participating on the evaluation committee, [each per'on's qualifications, original] documents evidencing the scoring by the evaluation committee, the commit'ee's evaluation of the successful and unsuccessful vendors, and any award recommendation[. OSC may request such documents following award notice.];

**6. For insurance contracts, in addition to the documentation required at N.J.A.C. 5:34-2.3, contracting units shall submit the insurance broker contract; and**

**7. A contracting unit utilizing the competitive contracting process pursuant to N.J.S.A. 40A:11-4.1 et seq., or 18A:18A-4.1 et seq., shall provide the OSC with the following documentation:**

- i. The governing body resolution authorizing the use of competitive contracting;**
  - ii. The notice of contract award published in the official newspaper of the governing body;**
  - iii. In accordance with N.J.A.C. 5:34-4.3, a certification by evaluation committee members that no conflict of interest related to evaluation of the proposals exists;**
- and**

**iv. If applicable, approval by the Director of Local Government Services in accordance with N.J.S.A. 40A:11-4.1.k to engage in competitive contracting.**

[17:44]19:70-3.9 [Confidentiality of documents and information submitted for] **Written determination of contract review as a public record**

[(a) Information communicated for notice and review by or between contracting units and OSC is considered advisory, consultative or deliberative material for purposes of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., as amended and supplemented.]

[(b)] **(a)** Pursuant to N.J.S.A. 52:15C-[10b(5)]**10.b(5)**, the [Procurement Division] **State Comptroller** may[, within its discretion and after notifying the contracting unit, determine that] **designate** information submitted for contract review [should be part of a written determination designated] as a public record [for reasons of transparency, providing guidance or other public purpose] **and make it public.**

**(b) The State Comptroller may provide notice to the public and a contracting unit of any violations of procurement or other law**©**(c) Prior to making any written determination public, the contracting unit will be provided with a confidential draft and the opportunity to comment or provide additional documentation or information, which the State Comptroller may take under consideration.**

[17:44]19:70-3.10 Requirements for record retention and production

Where applicable, all contracting units shall comply with record retention schedules as established by the State Records Committee pursuant to the **Destruction of Public Records Law (1953)**, N.J.S.A. 47:3-[20]15 et seq. If a contracting unit is not subject to N.J.S.A. 47:3-[20]15 et

seq., then relevant records shall be maintained for a period of no less than five years after contract completion. When requested, any contracting unit shall produce any record for audit or review by **the** OSC.

[17:44]19:70-3.11 [Completion of the contract] **Contract** review process, **approval**, and [notification of any deficiencies found in procurement process or contracts] **further action**

(a) For contracts [valued at \$10 million or more] **meeting the pre-advertisement review threshold**, the [Procurement] **Public Contracting Oversight** Division shall notify the contracting unit, in writing, if the proposed procurement process [is irregular] **does not comply with public contracting laws, rules, and [the advertisement cannot proceed.] regulations, and identify any errors or deficiencies that compromise the purpose of competitive bidding, including, but not limited to, ambiguous and conflicting contract terms, actual or apparent favoritism, or other indications of fraud, waste, and abuse. The contracting unit may not proceed with the procurement process until provided written notice to proceed.**

**Contracting units shall cooperate fully with the Public Contracting Oversight Division during the contract review.**

(b) For contracts [valued at more than \$2 million but less than \$10 million of which OSC was notified post-award] **meeting the post-award review threshold submitted to the OSC for review**, the [Procurement] **Public Contracting Oversight** Division may provide [information] **guidance** to the contracting unit on ways [in which the] **to improve its** procurement process or contract award process, [could be improved and any] **cure any noted** deficiencies [cured], or take other appropriate action.

**(c) Based on deficiencies or violations discovered during the contract review, the Public Contracting Oversight Division may conduct further fact-finding, issue a referral to an appropriate entity, or issue a letter or report identifying deficiencies or violations of law in the procurement process. In the discretion of the State Comptroller, such information may be made available to the public pursuant to N.J.A.C. 19:70-3.9.**

**(d) Following a determination by the State Comptroller of a deficiency or violation of law, the State Comptroller may direct the contracting unit to submit and comply with a corrective action plan or implement a training and/or monitoring program for such contracting unit. The monitoring program may consist of a defined period of oversight for contracts of significant consideration.**

#### **SUBCHAPTER 4. MEDICAID FRAUD DIVISION**

##### **19:70-4.1 Definitions**

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

**“Confidence interval” means the range of values expected to contain the overpayment amount with a reasonable degree of certainty.**

**“Confidence level” means the percentage of confidence intervals that would be expected to contain the actual overpayment amount if repeated sampling were to occur.**

**“Confidence limit” means the upper and lower boundaries of a confidence interval that are formed by adding or subtracting the precision to or from the point estimate, respectively.**

**“Error rate” means the number of sampling units in error divided by the total number of units sampled. It can also refer to the sample dollars in error divided by the total dollars in the sample.**

**“Extrapolation” means projecting information obtained from a statistical sample, including, but not limited to, payment errors, to the sample universe.**

**“Fair hearing” means an evidentiary hearing for contested cases as required pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq.**

**"MFD" means the Medicaid Fraud Division.**

**“Measurement unit” means the individual item that is reviewed to determine the amount of overpayment for a particular sampling unit.**

**“Point estimate” means the estimated total overpayment in a universe.**

**“Precision” means the error caused by selecting a statistical sample as opposed to reviewing the entire universe. Precision may also be referred to as the sampling error or margin of error.**

**“Sample design” means a method that specifies the manner in which the sampling units are to be selected for the statistical sample.**

**“Sampling plan” means the plan that specifies the universe and how it was determined, the period of review, the sample design, the sample size, the random number generation, and any other information required to re-create the sample.**

**“Sampling unit” means the individual item that can be selected from the universe to be a part of the sample.**

**“Statistical sample” or “statistical sampling” means a probability sample is selected and that the results of the sample are extrapolated. A probability sample means that every unit in the universe has a known, non-zero chance of being selected.**

**“Waste” means the overutilization or the misuse of Medicaid resources.**

**“Universe” means the listing of all possible units under review from which the sample is selected.**

#### **19:70-4.2 Sampling and extrapolation**

**(a) The MFD may determine the amount of money erroneously paid to a provider by the use of statistical sampling and extrapolation, rather than by an audit, investigation, or other review of 100 percent of the claims during the period of time under review.**

**(b) If the MFD chooses to use statistical sampling and extrapolation to determine an overpayment, it will select a probability sample (that is, a random sample) for the review period. The MFD will calculate the net overpayment amount, which is comprised of any underpayments and overpayments in the statistical sample. The MFD will then calculate the total overpayment for the review period by extrapolating to the universe from which the sample was drawn.**

**(c) If, during the course of the audit, investigation, or other review, any new claims are billed or any original claims that are part of the sample or universe are voided, denied, rebilled, readjudicated, or otherwise adjusted, only the original claims shall remain in the sample or universe.**

**(d) The MFD may use statistical sampling and extrapolation to determine overpayments regardless of the error rate determined during the review of the sample.**



**(e) The MFD may use statistical sampling and extrapolation to determine overpayments regardless of sample size.**

**(f) When the MFD performs an extrapolation, it shall calculate the point estimate and precision in order to determine a confidence interval.**

**(g) When the MFD uses statistical sampling and extrapolation to determine overpayments, the demand for recovery shall be accompanied by the following information:**

**1. A sampling plan;**

**2. The universe from which the sample was drawn;**

**3. All sampling and measurement units in the statistical sample with a summarized description of the reason(s) for the overpayment determinations.**

**i. The formulas and calculation procedures used to determine the amount to be recovered; and**

**ii. The confidence level used to calculate the precision of the extrapolated overpayment; and**

**4. An extrapolation based upon a statistical sample will be presumed, in the absence of expert testimony and evidence to the contrary, to be an accurate determination of the overpayments made or penalty to be imposed. In rebuttal, the provider may submit expert testimony challenging the statistical sample and extrapolation by the MFD.**

#### **19:70-4.3 Interest**

**(a) In accordance with N.J.S.A. 30:4D-17.f, the MFD may impose six percent interest on overpayments made to any person, firm, corporation, partnership, or other legal entity.**

**(b) Interest shall accrue from the date upon which the overpayment was made to said person, firm, corporation, partnership, or other legal entity until the date upon which repayment is made to the State.**

**1. Where a series of overpayments have been made to any person, firm, corporation, partnership, or other legal entity, the MFD may, in its sole discretion, compute interest from the date of the last overpayment to the date upon which repayment is made to the State.**

**2. Interest may be tolled in accordance with N.J.S.A. 30:4D-17.f.**

**3. Waiver of interest shall be determined as follows:**

**i. If the MFD issues a preliminary recovery demand notice or final audit report to a provider, it will automatically waive interest imposed pursuant to (a) above if, within 60 days of the provider's receipt of such preliminary recovery demand or final audit report:**

**(1) The case is resolved pursuant to a signed settlement agreement between the MFD and the provider; or**

**(2) The provider repays the recovery demand in full to the Medicaid program;**

**ii. The waiver period may be extended beyond the 60-day timeframe if, in its discretion, the MFD finds that the parties are engaged in good faith efforts to resolve the case;**

**iii. If the MFD issues a notice of claim to a provider, interest will not be waived unless one or more of the following mitigating circumstances exist and, in its discretion, the MFD finds that waiver is in the best interest of the Medicaid program:**

- (1) Timely resolution of the case;**
- (2) Cooperation by the provider;**
- (3) Responsiveness of the provider;**
- (4) Demonstration by the provider that the violation that led to the overpayment is corrected; or**
- (5) Other mitigating circumstances; and**

**iv. After a case is transmitted to the Office of Administrative Law for a fair hearing, the assessment of interest will not be waived.**

**(c) In accordance with N.J.S.A. 30:4D-17.e, the MFD may impose a payment of penalty interest on the amount of the excess benefits or overpayments at the maximum legal rate in effect on the date the payment was made to said person, firm, corporation, partnership, or other legal entity for the period from the date upon which payment was made to the date upon which repayment is made to the State.**

**1. Assessments of penalty interest pursuant to N.J.S.A. 30:4D-17.e(1) shall not be waived under any circumstances.**

#### **19:70-4.4 Civil monetary penalties**

**(a) Pursuant to N.J.S.A. 30:4D-17.e, the MFD may impose civil monetary penalties for violations of the following statutory provisions:**

- 1. Violations of N.J.S.A. 30:4D-17.a, b, c, or d; or**
- 2. Violations of N.J.S.A. 2A:32C-3. Pursuant to N.J.S.A. 2A:32C-3, no proof of specific intent to defraud is required to constitute a violation of the subsection and trigger**

penalties. Acts occurring by innocent mistake or as a result of mere negligence shall be a defense to an action pursuant to this section. Violations of this paragraph, include:

i. Knowingly presenting, or causing to be presented, to an employee, officer, or agent of the State, or to any contractor, grantee, or other recipient of State funds, a false or fraudulent claim for payment or approval;

ii. Knowingly making, using, or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the State;

iii. Conspiring to defraud the State by getting a false or fraudulent claim allowed or paid by the State;

iv. Having possession, custody, or control of public property or money used, or to be used, by the State and knowingly delivering, or causing to be delivered, less property than the amount for which the person receives a certificate or receipt;

v. Being authorized to make or deliver a document certifying receipt of property used or to be used by the State and, intending to defraud the entity, making or delivering a receipt without completely knowing that the information on the receipt is true;

vi. Knowingly buying, or receiving, as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property.

(1) “Knowing” and “knowingly” shall have the meaning as set forth at N.J.S.A. 2A:32C-2; or

vii. Knowingly making, using, or causing to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the State.

**(1) “Knowing” and “knowingly” shall have the meaning as set forth at N.J.S.A. 2A:32C-2.**

**(b) Examples of instances that may merit civil penalties pursuant to (a) above include, but are not limited to, the following actions:**

- 1. Repeated violations by a party for the same or similar conduct;**
- 2. A party alters or fabricates documentation; or**
- 3. A party fails to produce one-third or more records for goods and services billed to Medicaid when requested by the MFD to produce same.**

**(c) Pursuant to N.J.S.A. 30:4D-17.e, any person, firm, corporation, partnership, or other legal entity may be assessed the following penalties:**

- 1. Payment of an amount not to exceed three times the amount of the excess benefits or overpayments as determined by the MFD; and**
- 2. Payment in the sum of not less than and not more than the civil penalty allowed pursuant to the Federal False Claims Act, 31 U.S.C. §§ 3729 et seq., as it may be adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub.L. 101-410 for each excessive claim for assistance, benefits, or overpayments.**

**(d) In accordance with N.J.S.A. 30:4D-17.k, the MFD may impose monetary penalties as follows:**

- 1. A person who violates the provisions at N.J.S.A. 30:4D-17.a, b, or c shall be liable for a penalty of not less than \$15,000 and not more than \$25,000 for each violation; and**
- 2. A person who violates the provisions at N.J.S.A. 30:4D-17.d shall be liable for a penalty of not less than \$10,000 and not more than \$25,000 for each violation.**

**(e) In accordance with N.J.S.A. 30:4D-17.l, the MFD may additionally assess a penalty of**

not less than \$25,000 and not more than \$150,000 for each repeat violation when the following conditions are met:

1. A person violates the provisions at N.J.S.A. 30:4D-17.a, b, or c and the aggregate amount obtained or sought to be obtained is \$1,000 or more; and

2. The person has previously been convicted of a violation of the provisions at N.J.S.A. 30:4D-17.a, b, or c within 10 years of the current violation, and the aggregate amount obtained or sought to be obtained was \$1,000 or more.

(f) Nothing in this section will preclude the MFD from also assessing other monetary civil penalties set forth in this chapter or that otherwise may be imposed by law.

(g) Nothing in this section shall preclude the MFD from seeking administrative sanctions against a Medicaid provider, including, but not limited to, suspension, debarment, disqualification, and/or termination from the Medicaid program.

#### **19:70-4.5 Administrative sanctions**

(a) The MFD may suspend, debar, or disqualify providers, persons, companies, firms, associations, corporations, or other entities from participation in the Medicaid program in accordance with N.J.A.C. 10:49-11.1, incorporated herein by reference.

(b) If good cause exists to exclude a provider from participation in the Medicaid program pursuant to any of the provisions at N.J.A.C. 10:49-11.1(d)1 through 27, incorporated herein by reference, then the MFD may terminate any existing agreement with a provider in accordance with N.J.A.C. 10:49-3.2(f).

**19:70-4.6 Subpoena power of the Medicaid Fraud Division**

**(a) Pursuant to N.J.S.A. 30:4D-57.c(6), the MFD may compel at a specific time and place, by subpoena, the appearance and sworn testimony of any person whom the Director reasonably believes may be able to give information relating to a matter under investigation.**

**1. For this purpose, the Medicaid Fraud Division is empowered to administer oaths and examine witnesses under oath, and compel any person to produce at a specific time and place, by subpoena, any documents, books, records, papers, objects, or other evidence that the Director reasonably believes may relate to a matter under investigation.**

**2. If any person to whom a subpoena is issued fails to appear or, having appeared, refuses to give testimony, or fails to produce the books, papers, or other documents required, the MFD, or its representative, may apply to the Superior Court for an order compelling the person to appear and give testimony or produce the books, papers, or other documents, as applicable. Any person failing to obey the court's order may be punished by the court for contempt.**

**(b) Pursuant to N.J.S.A. 54:50-9.e, the MFD, as a division of the Office of the State Comptroller, may request and examine tax records and files in the possession of the New Jersey Division of Taxation.**

**19:70-4.7 Additional information/document submissions**

**(a) Within 30 calendar days after the MFD has served, on a provider, its preliminary recovery demand, a provider may submit to the MFD clarifying information or supplemental documentation that the provider had not previously provided. Any such**

documents the provider submits shall not be altered or created for purposes of the MFD audit, investigation, or review.

(b) The provider, or the provider's designee, may request an extension of time beyond the 30-calendar-day timeframe. The request must:

1. Establish good cause for the delay in submitting the records; and
2. Be received by the MFD before the date the records are due to be submitted.

(c) Records not provided to the MFD during the review process, including the timeframes set forth at (a) and (b) above, shall not be admissible in any subsequent contested case proceeding arising out of a finding and order for repayment of any overpayment identified unless the party can demonstrate the following by clear and convincing evidence:

1. The purported records are authentic; and
2. The party had good cause for failing to produce the records within the review

timeframe established above.

(d) This section does not preclude providers that have provided records to the MFD during the review process from presenting clarifying information or supplemental documentation in the appeals process in order to defend against any overpayment identified. This section is intended to minimize potential duplication of effort and delay in the audit, investigation, or review process; minimize unnecessary appeals; and otherwise forestall fraud, waste, and abuse in the Medicaid program.

#### **19:70-4.8 Fair hearings**

(a) If the MFD takes an enforcement action, including, but not limited to, assessing an overpayment, instituting a monetary penalty, suspending payments, terminating a provider



agreement, or denying a provider enrollment/reenrollment application, then the named party or parties may request a fair hearing to contest the agency action.

1. A request for a fair hearing shall be made, in writing, within 20 days of the receipt of the notice of the agency action.

i. Failure to submit a written request for a fair hearing within the 20-day time period shall result in the party forfeiting the opportunity to request a fair hearing.

2. A request for a fair hearing shall include a written response to the MFD's action, including any legal objections and shall set forth all material facts the party or parties contend are contested.

i. Failure to include such a written response shall result in the party forfeiting the opportunity to request a hearing.

(b) If the MFD issues an administrative sanction against a party, including, but not limited to, a suspension, debarment, and/or disqualification action as set forth at N.J.A.C. 10:49-11.1, the named party or parties shall be afforded appeal rights as set forth at N.J.A.C. 10:49-11.1.

(c) If the MFD takes an enforcement action against an individual recipient of medical services from the Division of Medical Assistance and Health Services, the individual shall be afforded appeal rights as set forth at N.J.A.C. 10:49-10.3.

(d) Upon receipt of a request for a fair hearing, the MFD shall inform the Division of Medical Assistance and Health Services of the request.

(e) If the MFD determines, in accordance with applicable law, that a matter is not a contested case, the MFD may request that the Division of Medical Assistance and Health Services decline to hold a hearing, decline to transmit the matter to the Office of

Administrative Law for a hearing, and enter a final agency decision based on the record prepared during the administrative process conducted by the MFD.

(f) Fair hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

## **SUBCHAPTER 5. DEBARMENT, SUSPENSION, AND DISQUALIFICATION OF A PERSON(S)**

### **19:70-5.1 Purpose and scope**

The purpose of this subchapter is to set forth the procedures that apply to debarment, suspension, and disqualification of a person or persons from contracting with the OSC, specifically those contracts awarded pursuant to N.J.S.A. 52:15C-5.c et seq. Hearings arising as a result of this subchapter are contested cases subject to the requirements of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

### **19:70-5.2 Definitions**

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

"Affiliates" means persons having a relationship such that any one of them directly or indirectly controls or has the power to control another.

"Debarment" means an exclusion from OSC contracting, on the basis of a lack of responsibility evidenced by an offense, failure, or inadequacy of performance, for a

reasonable period of time commensurate with the seriousness of the offense, failure, or inadequacy of performance.

**"Disqualification"** means a debarment or a suspension that denies or revokes a qualification to bid or otherwise engage in OSC contracting, which has been granted or applied for pursuant to statute, rules, or regulations.

**"OSC contracting"** means any arrangement giving rise to an obligation to supply anything to or perform any service through a contract issued by the OSC, other than by virtue of State employment, or to supply anything to or perform any service for a private or public person where the OSC provides financial assistance and retains the right to approve or disapprove the nature or quality of the goods or services or the persons who may supply or perform the same.

**"Person"** means any natural person, company, firm, association, corporation, or other entity that is engaged in or offers or proposes to be engaged in OSC contracting.

**"Suspension"** means an exclusion from State contracting for a temporary period of time, pending the completion of an investigation or legal proceedings.

#### **19:70-5.3 Causes for debarment of a person(s)**

**(a) In the public interest, the OSC may debar a person for any of the following causes:**

**1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract;**

**2. Violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false**

swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity or honesty;

3. Violation of the Federal or State antitrust statutes, or of the Federal Anti-Kickback Act or of the Copeland Anti-kickback Act, 18 U.S.C. § 874 and 40 U.S.C. § 3145;

4. Violation of any laws governing the conduct of elections of the Federal Government or the State of New Jersey or of its political subdivision;

5. Violation of the Law Against Discrimination, N.J.S.A. 10:5-1 et seq., or of the act banning discrimination in public works employment, N.J.S.A. 10:2-1 et seq., or of the act prohibiting discrimination by industries engaged in defense work in the employment of persons therein, N.J.S.A. 10:1-10 et seq.;

6. Violation of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor;

7. Violation of any laws governing the conduct of occupations or professions or regulated industries;

8. Violation of any laws that may bear upon a lack of responsibility or moral integrity;

9. Willful failure to perform in accordance with contract specifications or within contractual time limits;

10. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the person debarred;

11. Violation of contractual or statutory provisions regulating contingent fees;

**12. Any other cause affecting responsibility as an OSC contractor of such serious and compelling nature as may be determined by the OSC to warrant debarment, including, but not limited to, making a material false representation in a bid, even if such conduct has not been or may not be prosecuted as violations of such laws or contracts;**

**13. Debarment by some other department or agency in the Executive Branch;**

**14. Any violation of the prohibited activities set forth at N.J.A.C. 19:70-5.9(a) or failure to report violations of prohibited activities as required pursuant to N.J.A.C. 19:70-5.9(b); or**

**15. Agreeing with any agency of government to refrain from bidding on public contracts for reasons that, in the discretion of the State Comptroller, warrant debarment.**

#### **19:70-5.4 Conditions affecting the debarment of a person(s)**

**(a) The following conditions shall apply concerning debarment:**

**1. Debarment shall be made only upon approval of the State Comptroller, except as otherwise provided by law;**

**2. The existence of any of the causes set forth at N.J.A.C. 19:70-5.3 shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the State Comptroller, unless otherwise required by law, and shall be rendered in the best interests of the State;**

**3. All mitigating factors shall be considered in determining the seriousness of the offense, failure, or inadequacy of performance and in deciding whether debarment is warranted;**

**4. The existence of a cause set forth at N.J.A.C. 19:70-5.3(a)1 through 8 shall be**

established upon the rendering of a final judgment or conviction, including a guilty plea or a plea of *nolo contendere* by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the request of the debarred person unless other cause for debarment exists;

5. The existence of a cause set forth at N.J.A.C. 19:70-5.3(a)9, 10, 11, or 12 shall be established by evidence that the State Comptroller determines to be clear and convincing in nature; and

6. Debarment for the cause set forth at N.J.A.C. 19:70-5.3(a)13 shall be proper, provided that one of the causes set forth at N.J.A.C. 19:70-5.3(a)1 through 12 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

**19:70-5.5 Procedures, period of debarment, and scope of debarment affecting the debarment of a person(s)**

(a) The OSC, in seeking to debar a person or his or her affiliates, shall furnish such party with a written notice:

1. Stating that debarment is being considered;
2. Setting forth the reasons for the proposed debarment; and
3. Indicating that such party will be afforded an opportunity for a hearing if he or she so requests within a stated period of time. All such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act. However, where

another department or agency has imposed debarment upon a party, the OSC may also impose a similar debarment without affording an opportunity for a hearing, provided that the OSC furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in his or her behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

(b) Debarment shall be for a reasonable, definitely stated period of time that, as a general rule, shall not exceed five years. Debarment for an additional period shall be permitted, provided that notice thereof is furnished and the party is afforded an opportunity to present information in his or her behalf to explain why the additional period of debarment should not be imposed.

(c) Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced, in the discretion of the State Comptroller, upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction or judgment, actual change of ownership, management, or control, or the elimination of the causes for which the debarment was imposed.

(d) A debarment may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances.

(e) The offense, failure, or inadequacy of performance of an individual may be imputed to a person with whom he or she is affiliated, where such conduct was accomplished within the

course of his or her official duty or was affected by him or her with the knowledge or approval of such person.

**19:70-5.6 Causes for suspension of a person(s)**

In the public interest, the OSC shall suspend a person(s) for any cause specified at N.J.A.C. 19:70-5.3 or upon adequate evidence that such cause exists.

**19:70-5.7 Conditions for suspension of a person(s)**

**(a) The conditions for suspension shall include the following:**

**1. Suspension shall be imposed only upon approval of the State Comptroller and upon approval of the Attorney General, except as otherwise provided by law;**

**2. The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the State Comptroller and of the Attorney General and shall be rendered in the best interests of the State;**

**3. Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists or upon evidence adequate to create a reasonable suspicion that cause exists;**

**4. In assessing whether adequate evidence exists, consideration shall be given to the amount of credible evidence that is available, to the existence or absence of corroboration as to important allegations, and to inferences that may properly be drawn from the existence or absence of affirmative facts;**

**5. Reasonable suspicion of the existence of a cause described at N.J.A.C. 19:70-5.3(a)1 through 8 may be established by the rendering of a final judgment or conviction by**



a court or administrative agency of competent jurisdiction, by grand jury indictment, or by evidence that such violations of civil or criminal law did in fact occur; and

6. A suspension invoked by another agency for any of the causes described at N.J.A.C. 19:70-5.3 may be the basis for the imposition of a concurrent suspension by the OSC, who may impose such suspension without the approval of the Attorney General.

19:70-5.8 Procedures, period of suspension, and scope of suspension affecting the suspension of a person(s)

(a) The procedures, period of suspension, and scope of suspension are:

1. Upon approval of the Attorney General, the State Comptroller may suspend a person, or his or her affiliates, provided that within 10 days after the effective date of the suspension, the State Comptroller provides such party with a written notice:

- i. Stating that a suspension has been imposed and its effective date;
- ii. Setting forth the reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed;
- iii. Stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and
- iv. Indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for a hearing if he or she so requests, or a statement declining to give such reasons and setting forth the State Comptroller's position regarding the continuation of the suspension. Where a suspension by another agency has been the basis for suspension by the State Comptroller, the State

**Comptroller shall note the fact as a reason for suspension;**

**2. A suspension shall not continue beyond 18 months from its effective date, unless civil or criminal action regarding the alleged violation shall have been initiated within that period, or unless debarment action has been initiated. Whenever prosecution or debarment action has been initiated, the suspension may continue until the legal proceedings are completed; and**

**3. A suspension may include all known affiliates of a person provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure, or inadequacy of performance of an individual may be imputed to a person with whom he or she is affiliated, where such conduct was accomplished within the course of his or her official duty or was effectuated by him or her with the knowledge or approval of such person.**

#### **19:70-5.9 Prohibited activities of persons; reporting requirement**

**(a) In order to ensure that all persons meet a standard of responsibility that assures the OSC, the State, and its citizens that such persons will both compete and perform honestly in their dealings with the OSC and avoid conflicts of interest, all persons are prohibited from engaging in the following activities:**

**1. No person shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any OSC employee or to any member of the immediate family, as defined at N.J.S.A. 52:13D-13.i, of any such member or employee, or to any partnership, firm, or corporation with which such member, employee, or member of their immediate family is employed or**

associated, or in which such member or employee has an interest within the meaning at N.J.S.A. 52:13D-13.g;

2. No person shall, directly or indirectly, undertake any private business, commercial, or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such person to, any OSC employee having any duties or responsibilities in connection with the purchase, acquisition, or sale of any property or services by or to the OSC. No person shall, directly or indirectly, undertake any private business, commercial, or entrepreneurial relationship with, whether or not pursuant to employment, contract, or other agreement, express or implied, or sell any interest in such person to any individual, firm, or entity with which such OSC employee is employed or associated or has an interest within the meaning at N.J.S.A. 52:13D-13.g. Any relationships subject to this provision shall be reported, in writing, forthwith to the State Ethics Commission, which may grant a waiver of this restriction upon application of the OSC employee upon a finding that the present or proposed relationship does not present a potential or actual conflict of interest or the appearance of a conflict of interest;

3. No person shall influence, attempt to influence, or cause to be influenced, any OSC employee in an official capacity in any manner that might tend to impair the objectivity or independence of judgment of said employee; and

4. No person shall cause or influence, or attempt to cause or influence, any OSC employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the person or any other individual or entity.

(b) All persons shall report to the Attorney General of New Jersey and the State Ethics

**Commission the solicitation of such persons of any fee, commission, compensation, gift, gratuity, or other thing of value by an OSC employee.**

**(c) The prohibited activities at (a) above shall not be construed to prohibit a person from offering or giving gifts to or contracting with an OSC employee, nor be construed to prohibit an OSC employee from receiving gifts from or contracting with a person, and shall not be grounds for debarment pursuant to N.J.A.C. 19:70-5.3(a)14, provided that such activities are offered or made under the same terms and conditions that are available to members of the general public and are consistent with any rules promulgated by the State Ethics Commission.**

**(d) The OSC shall include the prohibited activities and reporting requirements at (a) and (b) above in requests for proposals by the OSC and in all contracts with every person.**

#### **19:70-5.10 The extent of debarment, suspension, or disqualification**

**The exclusion from the OSC contracting by virtue of debarment, suspension, or disqualification shall extend to all OSC contracting and subcontracting within the control or jurisdiction of the OSC. However, when the State Comptroller determines it is essential to the public interest, and upon filing of a finding thereof with the Attorney General, an exception from total exclusion may be made with respect to a particular State contract.**

#### **19:70-5.11 Prior notice by the State Comptroller**

**Insofar as practicable, prior notice of any proposed debarment or suspension shall be given by the State Comptroller to the Attorney General and the State Treasurer.**

**19:70-5.12 List of debarred, suspended, or disqualified persons**

**The State Comptroller shall supply, to the State Treasurer, a list of all persons having been debarred, suspended, or disqualified in accordance with the procedures prescribed in this chapter. Such list shall at all times be available for public inspection.**

**19:70-5.13 State Comptroller's authority to contract**

**Nothing in this chapter shall be construed to limit the authority of the State Comptroller to refrain from contracting within the discretion allowed by law.**