

# RULE PROPOSALS

## INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

## CHILDREN AND FAMILIES

### (a)

#### DIVISION OF CHILD PROTECTION AND PERMANENCY

#### Division Utilization of Family Child Care Providers Proposed Readoption with Amendments: N.J.A.C. 3A:16

Authorized By: Christine Norbut Beyer, M.S.W., Commissioner,  
Department of Children and Families.

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

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

Proposal Number: PRN 2019-0333.

Submit written comments by May 17, 2019, to:

Debra A. Hayes  
Department of Children and Families  
PO Box 717  
Trenton, New Jersey 08625  
or [rules@dcf.nj.gov](mailto:rules@dcf.nj.gov)

The agency proposal follows:

#### Summary

As the Division of Child Protection and Permanency (Division) has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Pursuant to N.J.S.A. 52:14B-5.1.c, N.J.A.C. 3A:16, Division Utilization of Family Child Care Providers, was scheduled to expire on February 13, 2019. As the Division has filed this notice of re-adoption prior to the expiration date, that date is extended 180 days to August 12, 2019, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Division has reviewed these rules and has determined that they continue to be necessary, proper, and reasonable for the purpose for which they were originally promulgated.

These rules were first adopted May 7, 1990, to replace expired rules that allowed the Division to pay for family child care only when the number of children did not exceed five. See N.J.A.C. 10:122B-1.3(a)4, which expired September 10, 1989, and expired N.J.A.C. 10:122-4.

The Division provides family child care for children to prevent abuse and neglect and to remediate the effects of abuse and neglect. In order to ensure that abused or neglected children receive a high-quality service that meets their needs, the Division requires that a family child care provider be registered pursuant to the Family Day Care Provider Registration Act, N.J.S.A. 30:5B-16 et seq., and the Manual of Requirements for Family Child Care Registration at N.J.A.C. 3A:54. In addition, the Division

requires that the family child care provider care for no more than five children at a time and that no more than two of the children be 23 months or younger. In accordance with N.J.A.C. 3A:16-2.3, an exception to the number of children is allowed only when a provider assistant is present, and the exception has been approved by the Division Director or designee.

The Division proposes to amend N.J.A.C. 3A:16-1.1 and 2.1 and the heading of Subchapter 2, by removing the former, and no longer correct title, "Division of Youth and Family Services," and its acronym "DYFS," and replacing it with the correct title, "Division of Child Protection and Permanency" and its abbreviation "CP&P." These amendments are made pursuant to N.J.S.A. 9:3A-10, effective June 29, 2012.

The Division proposes to amend N.J.A.C. 3A:16-1.1 by removing the word "will" and replacing it with "shall" as it is the preferred language.

The Division proposes to amend N.J.A.C. 3A:16-2 by removing the acronym "DYFS-authorized" and replacing it with "Division-authorized." These changes are consistent with the definition of "Division" at N.J.A.C. 3A:54-1.2.

The Division proposes to amend N.J.A.C. 3A:16-2.2 by removing the term "foster" and replacing it with current terminology, "children placed with the provider" and "children in placement." These terms describe children in out-of-home placement or children receiving out-of-home placement services.

A summary of the rules proposed for re-adoption follows:

N.J.A.C. 3A:16-1.1 states the purpose and scope of the chapter.

N.J.A.C. 3A:16-1.2 references the definitions used in the chapter.

N.J.A.C. 3A:16-2.1 states who is eligible to provide family child care services that are authorized by the Division.

N.J.A.C. 3A:16-2.2 states the maximum number of children who may receive family day care when one or more of the children's care is authorized by the Division.

N.J.A.C. 3A:16-2.3 states an exception to the number of children who can be cared for by a provider when one or more of the children's care is authorized by the Division.

N.J.A.C. 3A:16-2.4 states that the Division shall not use, and the Department of Human Services shall not pay, a family child care provider when the Division has substantiated child abuse by the provider or a family member or when the provider is appealing a substantiated finding of child abuse.

#### Social Impact

The effect of the rules proposed for re-adoption is to assure that children who receive family child care services through the Division receive services that adequately meet their needs. The rules proposed for re-adoption with amendments apply only to children who are supervised by the Division and whose family child care is authorized by the Division and paid for by the Department of Human Services.

The effects of the rules that require that the Division authorize only family child care providers who are registered are that the providers have access to the training and technical assistance offered by the sponsoring

organization and an additional population of children who need family child care is able to utilize their services. Some potential family child care providers may consider the process of applying to become registered, being evaluated by the sponsoring organization, and attending pre-service training as negative effects of continuing these rules. The Division considers them to be positive impacts that enable the provider to give a Division-supervised child the quality of care needed.

#### Economic Impact

Each family child care provider caring for a child whose family child care is authorized by the Division is required to be registered under the provisions of N.J.A.C. 3A:54. N.J.A.C. 3A:54-5.6 requires that “the provider shall pay a non-refundable registration fee of \$25.00 ...” which covers a three-year period. N.J.A.C. 3A:54 requires the family child care provider to meet certain standards, such as having first aid and CPR training and a medical examination conducted within the six months of application, which may require the family child care provider to spend money.

In addition, N.J.A.C. 3A:54-6.4(d)1 requires each provider to have “at least one working smoke detector installed on each floor of the home.” In accordance with N.J.A.C. 3A:54-6.4(d)10, an approved carbon monoxide detector shall be located and installed on every level of the home.

While there are expenses for the provider, they enable the provider to be paid by the Department of Human Services, listed in the New Jersey Child Care Resource and Referral System, and referred by the sponsoring organization to parents seeking family child care. Each of these effects can produce additional income for the provider.

Each year the Division of Child Protection and Permanency authorizes the use of family child care services to eligible children. The annual cost for the family child care services is paid through the Department of Human Services from Federal and State funding.

#### Federal Standards Statement

The rules proposed for readoption with amendments are not subject to Federal standards or requirements, and a Federal standards analysis is not required for this rulemaking.

#### Jobs Impact

The Division anticipates that no jobs will be generated or lost as a result of the rules proposed for readoption with amendments.

#### Agriculture Industry Impact

The rules proposed for readoption with amendments have no impact on the agriculture industry.

#### Regulatory Flexibility Analysis

The rules proposed for readoption with amendments affect New Jersey’s registered family child care providers who care for children whose care is authorized by the Division. All of these providers fall within the definition of a small business, as defined in the State Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. It is not necessary to establish different standards for larger or smaller providers, as all family child care providers are small businesses, and the following reporting, recordkeeping, and compliance requirements shall apply uniformly.

Each provider is required to keep attendance records for the child and to submit a monthly voucher for payment in order to be paid.

Initial compliance costs are the \$25.00 registration fee, which covers a three-year period, and any expenses required to meet the registration requirements. For example, an applicant may need to pay for a medical examination, if he or she has not had one within the previous six months, or the applicant may need to purchase one or more smoke detectors to meet the requirements of N.J.A.C. 3A:54.

Annual compliance costs are the cost of postage to submit the monthly payment vouchers. Every three years the \$25.00 registration fee must be paid.

#### Housing Affordability Impact Analysis

The rules proposed for readoption with amendments have no impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules proposed for readoption with amendments would evoke a change in the average costs associated with housing because the rules proposed for readoption with amendments pertain to

family child care services authorized by the Division of Child Protection and Permanency.

#### Smart Growth Development Impact Analysis

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

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

The Division has evaluated this rulemaking and determined that it will not have an impact or 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. 3A:16.

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

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 3A:16-1.1 Purpose and scope

The purpose of this chapter is to outline the standards under which the Division of [Youth] **Child Protection** and [Family Services will] **Permanency shall** authorize family child care services for a child receiving child welfare services, either directly, or under a contract, with a family child care provider. This chapter requires that any Division-authorized family child care services purchased by the Department of Human Services or its agents be provided by a family child care provider who meets the standards of, and is registered in accordance with N.J.A.C. 3A:54, Manual of Requirements for Family Child Care Registration. The standards set by this chapter are more stringent than those set by N.J.A.C. 3A:54 for registered family child care providers in general because family child care is often utilized by the Division to relieve the effects of, and prevent abuse or neglect or to provide supervision or relief needed by, a child’s family.

### SUBCHAPTER 2. [DYFS-AUTHORIZED] **DIVISION-AUTHORIZED** FAMILY CHILD CARE SERVICES PROGRAM REQUIREMENTS

#### 3A:16-2.1 Eligible providers of [DYFS-authorized] **Division-authorized** family child care services funded by the Department of Human Services or its agents

The Division shall utilize the services of only those family child care providers who meet the requirements of and are registered in accordance with the provisions of N.J.A.C. 3A:54, Manual of Requirements for Family Child Care Registration.

#### 3A:16-2.2 Maximum number of children

For any family child care provider who receives payment from the Department of Human Services or its agents, either directly or through contract, for family child care services for one or more children, as authorized by the Division, the maximum number of children cared for by the family child care provider shall not exceed five children at a time, regardless of fee-paying or non-fee-paying status. The total of five children shall include the [provider’s foster] children **placed with the provider and the provider’s** own children, only if the [foster] children **in placement or the provider’s** own children are age five or younger. No more than two of the total number of children cared for by the family child care provider shall be age 23 months or younger.