

RULE PROPOSAL

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

Adoptions

Proposed Amendments: N.J.A.C. 10:121-1.1, 1.2, 1.3, and 2.1

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

Authority: N.J.S.A. 9:3-54.1, 30:4C-4.h, and 30:4C-49.

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

Proposal Number: PRN 2013-109.

Submit written comments by September 13, 2013 to:

Pamela Wentworth
Department of Children and Families
P.O. Box 717
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Children and Families (Department) proposes amendments to N.J.A.C. 10:121, Adoptions.

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

The Department is proposing to amend the language in N.J.A.C. 10:121-1.1, 1.2(a)9, and 2.1 from the Division of Youth and Family Services (DYFS) to the Division of Child Protection and Permanency (CP&P), to reflect the statutory change to N.J.S.A. 30:4C-2 et seq., which became effective June 29, 2012.

The Department is proposing to amend N.J.A.C. 10:121-1.1, 1.2(a)8, and 1.3(a) and (g) to change the outdated term "resource parent" to "resource family parent," which is the term widely used by the Department, and is consistent with usage of the term in N.J.A.C. 10:122C, Manual of Requirements for Resource Family Parents. No substantive changes are being made to the definition of the term "resource family parent."

The Department is proposing to amend N.J.A.C. 10:121-1.2 to change the term "special needs child" to add, in addition to children who the State of New Jersey may place for adoption, children that "a private adoption agency licensed to operate in New Jersey" has the legal right to place for adoption, when the child is reasonably expected to be hard to place.

The Department is proposing to amend N.J.A.C. 10:121-1.2(a)1 by replacing "any medical condition" with "a severe or chronic medical

condition" to describe when the child will require repeated or frequent hospitalization or treatment, which serves as a reason for considering a child to be a special needs child.

The Department is proposing to amend N.J.A.C. 10:121-1.3(a), to include adoption subsidy payments to adoptive parents who received a subsidy-eligible child, not under Department supervision, but through a private adoption agency licensed to practice adoption within New Jersey.

The Department is also proposing to amend N.J.A.C. 10:121-1.3(b)1, clarifying that an adoptive family may re-apply for adoption subsidy on behalf of a child who was "placed by the Department" and initially found ineligible for the subsidy benefit.

In addition, the Department is proposing to amend N.J.A.C. 10:121-1.3(f)8 to address a change in language from annual "certification" to annual "notice for subsidy." Adoptive parent(s) receiving subsidy shall comply annually with the notice for subsidy to notify the Department of changes in the needs of the child or circumstances of the adoptive family that would affect the eligibility for, or amount of, adoption subsidy.

Social Impact

The proposed amendments to N.J.A.C. 10:121-1.1, Division of Youth and Family Services to the Division of Child Protection and Permanency, pursuant to amendments to N.J.S.A. 30:4C-2, which became effective June 29, 2012, will have no social impact on the population receiving or applying for adoption subsidy.

The proposed amendments to the language in N.J.A.C. 10:121-1.1, 1.2(a)8, and 1.3(a) and (g) from "resource parent" to "resource family parent" will have no social impact on an adoptive or prospective adoptive parent nor an adopted or prospective adopted child.

The proposed amendment to N.J.A.C. 10:121-1.3(a), will have little to no impact on the majority of families already eligible to receive adoption subsidy, but would expand eligibility to an estimated five families who adopt special needs children through private agencies each year. For these few adoptions, the subsidy can provide additional means by which adopted children can obtain quality of life services that will have a positive impact on the adopted child. Services can include, but are not limited to: individual or family counseling (not always covered under Medicaid or private insurance); day or overnight summer camps; instructional or educational activities not available in traditional school settings; and/or, athletic and social activities that promote physical, emotional, or cognitive development and overall well-being.

The proposed amendments to N.J.A.C. 10:121-1.3(b)1 do not have any social impact on the majority of the children adopted through the Department each year. However, by clarifying who is eligible to re-apply for adoption subsidy on behalf of the child, after initially being found ineligible for subsidy benefits, the proposed amendment will have a positive social impact on the adopted child and his or her family. If the adopted child is found eligible for subsidy benefits, the funds and in-kind services (Medicaid) can be used to enhance the child's educational, social, environmental, and developmental well-being.

The proposed amendments to N.J.A.C. 10:121-1.3(f)8, addressing a change in language from annual “certification” to annual “notice for subsidy,” will have little to no social impact on adoptive parent(s) receiving subsidy, who shall annually notify the Department of changes in the needs of the child or circumstances of the adoptive family that would affect the eligibility for, or amount of, adoption subsidy.

Economic Impact

The families who adopt special needs children are assured a permanent subsidy and medical insurance to support the child until the child reaches age 18. The adoption subsidy board rate payments are equal to those paid to care for children in foster care. Therefore, there is no financial disincentive to adoption. A family receives the same amount of financial support and medical insurance whether the family provides foster care or adoptive care to a child.

The Department processed an estimated five private adoption subsidy payments in fiscal year (FY) 2012. The cost for those five private adoption subsidy payments totaled approximately \$55,872 in FY 2012.

The Department continues to provide subsidy to the resource family parent for a child adopted through private adoption agencies until each such child reaches 18 years of age.

Federal Standards Statement

N.J.A.C. 10:121-1 is consistent with the Title IV-E of the Social Security Act, 42 U.S.C. §§ 673 et seq., Adoption and Guardianship Assistance Program, and the definition of “adoption assistance agreement” at 42 U.S.C. § 675(3).

The Department operates a State-funded adoption subsidy program for special needs children who are not eligible for the Title IV-E Adoption Assistance program, pursuant to N.J.S.A. 30:4C-45 through 49. This program ensures that all special needs children have an equal opportunity to have a permanent adoptive family. Since the proposed amendments cover children that are not eligible for Title IV-E Adoption Assistance, they do not exceed any Federal standards. Consequently, no Federal standards analysis is required.

Jobs Impact

The Division anticipates no impact, either positive or negative, on job creation due to the adoption of these proposed amendments.

Agriculture Industry Impact

The proposed amendments have no impact on the agriculture industry.

Regulatory Flexibility Statement

Neither the Department nor the Department’s clients, nor the adoptive parents who apply for or receive adoption subsidy payments, are considered small businesses under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. Agencies approved or licensed either by New Jersey or another state to provide adoption services may be small businesses. The proposed amendments to N.J.A.C. 10:121 do not impose reporting, recordkeeping, or compliance requirements on any small businesses. The proposed amendments provide information on adoption subsidy payments to adoptive parents who received a subsidy-eligible child, not under Department supervision, but through a private adoption agency licensed to practice within New Jersey. Therefore, a regulatory flexibility analysis is not necessary.

Housing Affordability Impact Analysis

The proposed amendments to N.J.A.C. 10:121 will not have any impact on affordable housing in New Jersey and there is an extreme unlikelihood that the proposed amendments would evoke a change in the average costs associated with housing because the amendments pertain to the Division’s adoption subsidy program making payments for the care of a special needs child to adoptive parents when the adoption was achieved through a private agency.

Smart Growth Development Impact Analysis

The proposed amendments to N.J.A.C. 10:121 will have no impact on smart growth and there is an extreme unlikelihood that the proposed amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the amendments pertain to the Division’s adoption subsidy program making payments for the care

of a special needs child to adoptive parents when the adoption was achieved through a private agency.

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

SUBCHAPTER 1. ADOPTION SUBSIDY

10:121-1.1 Definitions

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

“[DYFS] **CP&P Director**” means the Director of the Division of [Youth and Family Services] **Child Protection and Permanency** in the Department of Children and Families.

“Resource **family parent**” means a person who has received a resource **family parent license** from the State of New Jersey in order to provide foster, adoptive, or kinship care.

“Special needs child” means any child who the State of New Jersey **or a private adoption agency licensed to operate in New Jersey** has the legal right to place for adoption but who is reasonably expected to be hard to place (due to a difficulty in finding a prospective adoptive home) as specified in N.J.A.C. 10:121-1.2.

10:121-1.2 Determining that a child is a special needs child

(a) A Department representative shall determine that a child is a special needs child for any of the following reasons:

1. [Any] **A severe or chronic** medical or dental condition, which will require repeated or frequent hospitalization or treatment;

2.-7. (No change.)

8. The child is over five years of age and has been living with a resource **family parent** for at least 12 months and adoption by the resource **family parent** is the most appropriate plan for the child. A child under five may be deemed special needs and qualify for subsidy under this subsection if he or she is a member of an ethnic or minority group for whom adoptive homes are not readily available; or

9. Any other condition of a specific child, which may be approved by the [DYFS] **CP&P Director** or designee.

10:121-1.3 Payments for the care and maintenance of a special needs child (adoption subsidy)

(a) The Department shall make payments for the care and maintenance of a special needs child to the person(s) with whom the child has been placed for adoption or by whom the child has been adopted when such payments are applied for prior to adoption according to such forms and procedures as may be established by the Department. The Department shall make adoption subsidy payments only to a person who, at the time the adoption is finalized, is a licensed resource **family parent** in accordance with N.J.A.C. 10:122C, [or to] a person who has been approved as an out-of-State adoptive parent, **or an adoptive parent who received a subsidy-eligible child, not under Department supervision, but through a private adoption agency licensed to operate within New Jersey.**

(b) The Department shall determine and approve the qualifications for subsidy payments prior to the completion of an adoption proceeding. In order to qualify for subsidy, a child must meet at least one criterion for a special needs child listed in N.J.A.C. 10:121-1.2. The failure of the Department to complete its determination and approval of qualifications prior to the finalization of adoption shall not prevent qualification for adoption subsidy, if application for such subsidy was made in a timely manner. Eligibility for subsidy shall be subject to an annual review and redetermination as described in N.J.A.C. 10:121-1.4(a).

1. An adoptive family may re-apply for adoption subsidy on behalf of a child who was **placed by the Department and** initially found ineligible for the subsidy benefit. The adoptive family may apply for adoption subsidy at any time after finalization, if the child develops problems traceable to either his or her genetic heritage or pre-adoptive experiences and which may qualify him or her for adoption subsidy.

(c)-(e) (No change.)

(f) Payments shall be made only pursuant to a written Adoption Assistance Agreement between the Department and the adoptive parent(s), which shall include:

1.-7. (No change.)

8. How the adoptive parent(s) shall notify the Department of changes in the needs of the child or circumstances of the adoptive family that would affect the eligibility for, or amount of, adoption subsidy, including complying with the annual [certification] **notice for subsidy** of the adoptive parent's legal responsibility to support the child;

9.-12. (No change.)

(g) A Department representative shall make a reasonable effort to place the child in an adoptive setting without providing a subsidy, unless doing so is against the best interest of the child, including, but not limited to, situations involving adoption by a child's resource **family** parent or where the Department determines that such efforts should not be made because of the special needs of the child or the special qualifications of the adoptive parents.

SUBCHAPTER 2. ADOPTION COMPLAINT INVESTIGATION FEES

10:121-2.1 Adoption complaint investigation

The Division of [Youth and Family Services] **Child Protection and Permanency**, as an approved adoption agency in New Jersey, is authorized to conduct adoption complaint investigations and required to charge to the plaintiffs in such cases the costs of conducting such investigations pursuant to N.J.S.A. 9:3-53. The Division of [Youth and Family Services] **Child Protection and Permanency** charges fees to conduct adoption complaint investigations, based on a person's or family's ability to pay.
