

RULE PROPOSALS

INTERESTED PERSONS

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

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

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

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES Community Care Waiver Waiting List Procedures Proposed Readoption with Amendments: N.J.A.C. 10:46C

Proposed Repeal: N.J.A.C. 10:46C-2.4

Authorized By: Carole Johnson, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4-25.6.

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

Proposal Number: PRN 2019-139.

Submit written comments by December 20, 2019, electronically to DDD-CO.LAPO@dhs.state.nj.us, or by regular mail or facsimile to:
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The agency proposal follows:

Summary

The Department of Human Services (Department) proposes to readopt N.J.A.C. 10:46C, Community Care Waiver Waiting List Procedures with proposed amendments and repeal of N.J.A.C. 10:46C-2.4. Chapter 46C establishes the standards and processes the Division of Developmental Disabilities (Division) uses to administer its waiting list.

Pursuant to N.J.S.A. 30:4-25.6, the Division is required to provide an individual determined eligible for Division services with appropriate functional services to the extent available. If the preferred service is not available, the Division must provide an alternate service and place the individual on a waiting list for the preferred service. Since 1985, the growing demand for services has exceeded the resources that the Division could provide. As a result, in an agreement with the Office of the Public Advocate, the Department established a waiting list procedure for individuals requesting residential-based services in the community. The Department adopted the original rules concerning the waiting list for community services on April 17, 1995.

At this time, the Department proposes to readopt the rules with amendments to reflect changes in the Division's operations and structure since the rules were last promulgated. Formerly, the Division provided

home and community-based services through the Community Care Waiver (CCW), authorized by the Centers for Medicare and Medicaid Services under section 1915(c) of the Social Security Act, P.L. 74-271. In 2017, the CCW was transitioned to the Department's Comprehensive Medicaid Waiver (CMW), authorized under section 1115 of the Social Security Act, and renamed the Community Care Program (CCP). Amendments are proposed to reflect this change.

Amendments are also proposed to reflect that when individuals are reached on the Priority Waiting List, they will receive services through either the CCP or the Supports Program (SP), based upon their assessed needs. The SP is a second Medicaid program implemented by the Division within the CMW. The CCP provides services to individuals who meet the level of care (LOC) for an Intermediate Care Facility (ICF) for Individuals with Intellectual Disabilities and would require institutional care without the availability of CCP services. The SP provides services for individuals served by the Division who do not require that institutional level of care. The SP and CCP are more fully described in the respective program manuals at: <https://nj.gov/humanservices/ddd/documents/supports-program-policy-manual.pdf> and <https://nj.gov/humanservices/ddd/documents/community-care-program-policy-manual.pdf>.

The Division has substantially transitioned from funding services through a contract reimbursement system to a Medicaid fee-for-service system. In the fee-for-service system, support coordinators are responsible for developing and maintaining individualized service plans, for linking individuals to needed services, and for monitoring the provision of those services. Amendments are proposed to recognize the use of support coordinators. Amendments are also proposed to omit references to in-home and out-of-home services, as this distinction is not relevant in the fee-for-service context, in which individuals may receive the same services wherever they reside.

The Department proposes several other amendments. These include proposed amendments to reflect that the provision of services for individuals under the age of 21 years has transitioned to the Department of Children and Families and that the Division is no longer operationally structured by geographic region. Additionally, the proposed amendments update the definition of legal guardian and identify the terminology currently used for the service planning document.

Finally, the Department proposes amendments to clarify when individuals reached on the priority category of the waiting list will be removed from that list. In particular, the proposed amendments make clear that individuals who are not eligible for, or choose not to enroll in, the CCP will be removed after the Division offers them enrollment in the SP, if they are not already enrolled in the SP. The Department also proposes an amendment to make clear that otherwise eligible individuals who are removed from the priority waiting list may obtain CCP services in the future, if emergency criteria are present.

The Department adopted Chapter 46C, Waiting List Procedures, effective April 17, 1995. Pursuant to Executive Order No. 66 (1978), the

Department readopted Chapter 46C effective April 15, 1996, and April 10, 2001, respectively. The Department repealed Chapter 46C and adopted it as new rules effective April 18, 2005. The Department extended the chapter expiration date from April 18, 2010, until the completion of the review of administrative regulations and rules by the Red Tape Review Group and until the Department readopted Chapter 46C pursuant to N.J.S.A. 52:14B-5.1. The Department readopted Chapter 46C effective April 18, 2011. The Department repealed Chapter 46C and adopted Chapter 46C, Community Care Waiver Waiting List Procedures, as new rules effective September 17, 2012.

Chapter 46C is set to expire on September 17, 2019. The Department is filing this notice of proposal to readopt the chapter with the Office of Administrative Law prior to that date and, pursuant to N.J.S.A. 52:14B-5.1.c(2), the expiration date of the chapter was extended 180 days to March 15, 2020. The Department has reviewed this chapter and has found that with the proposed amendments and repeal, the rules are reasonable, necessary, and proper for the purpose for which they were originally promulgated.

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

A summary of the rules proposed for readoption with amendments follows.

The Department proposes an amendment to the chapter heading to change "Community Care Waiver Waiting List Provisions" to "Community Care Program Waiting List Provisions" to recognize that the CCW was transferred to the Comprehensive Medicaid Waiver, authorized under section 1115 of the Social Security Act, P.L. 74-271, and renamed the Community Care Program.

Subchapter 1 sets forth the general provisions of the chapter, including the purpose and scope of the chapter and definitions of terms used in the chapter.

N.J.A.C. 10:46C-1.1 sets forth the purpose of the chapter. The Department proposes to delete language referencing in-home and out-of-home services, as this distinction is no longer relevant in the fee-for-service context.

N.J.A.C. 10:46C-1.2 sets forth the scope of the rules. The Department proposes an amendment to change "Community Care Waiver" to "Community Care Program" to reflect the change from the 1915(c) waiver to the CMW. The Department also proposes an amendment to reflect the existence of the SP as the waiver program providing services for individuals not receiving services through the CCP. The rulemaking also includes an amendment to delete a reference to in-home and out-of-home services, as this distinction is not relevant in the fee-for-service context.

N.J.A.C. 10:46C-1.3 contains definitions of the terms used in the chapter. The Department proposes to add definitions for "CCP" and "SP," as these waiver programs were not in existence when the chapter was last promulgated. Similarly, the Department proposes to delete the definition of CCW, which has been replaced by the CCP. The definitions of "day program" and "supports" are proposed to be deleted, as these terms are not utilized within the chapter. The definition of "emergency placement" is proposed to be replaced by the broader "emergency," to clarify that emergency services are not required to be a community placement. The proposed amendments delete outdated references to planning documents, that is, "individual habilitation plan," "essential lifestyle plan," and "service plan," and replaces them with "individualized service plan," the term currently in use. The definitions for "in-home services" and "out-of-home services" are proposed for deletion, as these distinctions are not relevant in the Medicaid fee-for-service context in which Division services are now provided. The proposed amendments add a definition for "support coordinator," as these professionals develop and maintain the individualized service plan in Medicaid fee-for-service. The proposed amendments also delete the definition of "regional offices," as the Division is no longer structured by geographic region. Lastly, the Department proposes to update the definition of "legal guardian" utilizing modern language.

Subchapter 2 sets forth the procedures for administration of the waiting list.

N.J.A.C. 10:46C-2.1 describes the two categories of the waiting list as Priority and General. The proposed amendments delete "CCW" and replaces it with "CCP." They also correct a spelling error.

N.J.A.C. 10:46C-2.2 establishes the procedures for adding an individual to the waiting list or changing an individual's waiting list category. The proposed amendments update references to service plans from IHP to ISP. The proposed amendments reflect that the Division no longer serves individuals under age 21. At N.J.A.C. 10:46C-2.2(a)1, "has sole custody" is proposed to be replaced with "acts as primary caregiver." The change clears up language that used both the terms "primary caregiver" and the term "sole custody" seeming to suggest that eligibility turned upon whether the parent with legal custody had turned 55, without regard to whether that particular parent was the parent who had assumed the role of primary caregiver. It also seemed to ignore joint custody situations. The language now makes clear that when a primary caregiver turns 55, the option to have the individual placed on the Priority Waiting List becomes available. At N.J.A.C. 10:46C-2.2(c)1i(1), "child's" is proposed to be deleted and replaced with "individual's." The proposed amendments delete the cross-reference to N.J.A.C. 10:46C-2.4, which is itself proposed for repeal. The proposed amendments also change the frequency of Waiver Review Team (WRT) meetings from monthly to as needed, to provide better efficiency. The proposed amendments reflect that support coordinators or case managers, as applicable, will be responsible for gathering and providing information for the WRT. A reference to regional structure is proposed for deletion.

N.J.A.C. 10:46C-2.3 sets forth procedures when an individual has been reached on the Priority Waiting List. The proposed amendments update Community Care Waiver and CCW to Community Care Program and CCP. The proposed amendment would also delete an outdated reference to regional case management. Amendments are proposed to reflect the current Division practice when an individual is reached on the Priority Waiting List by deleting references to in-home and out-of-home services, and instead directing that staff will discuss CCP and SP services with the individual or legal guardian when the individual is reached on the waiting list. Consistent with Medicaid requirements, the proposed amendments provide that an individual must meet the level of care (LOC) for an Intermediate Care Facility for Individuals with Intellectual Disabilities to receive services through the CCP, and that individuals served by the Division who do not meet that LOC will receive services through the SP. The proposed amendments also update "service plan" to "individualized service plan."

N.J.A.C. 10:46C-2.4 sets forth the criteria for placing children and young adults onto the Priority Waiting List. The Department proposes to repeal this section, as the Department of Children and Families now serves individuals with disabilities who are under the age of 21 years.

Recodified N.J.A.C. 10:46C-2.4 establishes the criteria for removal from the Priority Waiting List once an individual has been reached. The proposed amendments update CCW to CCP. Consistent with current practice, the proposed amendments also provide that after being reached on the Priority Waiting List, if an individual does not elect to enroll in the CCP, or is not otherwise eligible for CCP services, the Division will offer the individual Supports Program services, if the individual is not already enrolled in SP. If ineligibility for CCP is due to the individual not meeting the required Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/ID) level of care, the individual will be given the option to request a formal LOC review. If that review determines that the individual still does not meet ICF/ID LOC, the individual will be provided the required appeal rights. The individual's name will then be removed from the waiting list, but the proposed amendment clarifies that removal from the wait list does not prevent an otherwise eligible individual from accessing CCP services in the future, if emergency criteria are present. Additionally, any individual eligible to receive Division services who is not enrolled on the CCP may receive services through the SP.

Recodified N.J.A.C. 10:46C-2.5 establishes that emergencies shall be handled in accordance with N.J.A.C. 10:46B. The proposed amendments clarify that when an emergency exists, the individual is administratively placed at the top of the waiting list, so that the individual may access CCP services without being required to wait.

Recodified N.J.A.C. 10:46C-2.6 establishes the procedures for appeals. The proposed amendments update CCW to CCP.

Social Impact

The rules proposed for readoption with amendments and a repeal will have a positive social impact on individuals served and their families. The rules proposed for readoption with amendments and a repeal are necessary for the Division’s ability to manage the waiting list in a fair and equitable manner. The rulemaking provides individuals served and their families with necessary information regarding updates to Division operations.

Economic Impact

While there is a significant economic impact to the Division for the provision of CCP services for individuals reached on the waiting list, the rules proposed for readoption with proposed amendments and a repeal will not affect that economic impact. The number of individuals who can be served on the CCP waiver is limited. This limit is based on the projections of State funding available to fund the Division’s portion of the cost of providing services to people enrolled on the CCP waiver. Also, if an individual is reached on the waiting list and is found to be ineligible for the Community Care Program, the individual shall remain eligible to receive those services that the Division provides through the Supports Program, subject to available annual State and Federal appropriations. The Division does not anticipate that the rules will have an economic impact on service providers.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments and a repeal concern CCP waiting list procedures and are not subject to any Federal requirements or standards.

Jobs Impact

The rules proposed for readoption with amendments and a repeal concern waiting list procedures and will not generate jobs or cause any jobs to be lost.

Agriculture Industry Impact

The rules proposed for readoption with amendments and a repeal concern waiting list procedures and will have no impact on the agriculture industry in the State of New Jersey.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments and a repeal do not impose reporting, recordkeeping, or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rulemaking governs waiting list procedures and applies only to individuals served by the Division; the rulemaking will not have any effect on small businesses or private industry in general.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments and a repeal concern waiting list procedures and will have no impact on the affordability of housing, or upon the average costs associated with housing.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments and a repeal will have no impact on smart growth, or upon housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rulemaking involves the Community Care Program Waiting List.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department of Human Services evaluated this rulemaking and determined that it 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. 10:46C.

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

CHAPTER 46C
COMMUNITY CARE [WAIVER] PROGRAM WAITING LIST
PROCEDURES

SUBCHAPTER 1. GENERAL PROVISIONS

10:46C-1.1 Purpose

(a) This chapter establishes criteria and procedures for allocating limited [in-home and out-of-home] community-based services, based on the relative needs of the individuals waiting for Division services. In accordance with the Developmentally Disabled Rights Act, N.J.S.A. 30:6D-1 et seq., such services shall be designed to maximize the developmental potential of the individual in a manner least restrictive of personal liberty.

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

10:46C-1.2 Scope

This chapter shall apply to all individuals who are currently on the Community Care [Waiver] Program (CCP) Waiting List for [in-home and out-of-home] CCP community-based services, or eligible individuals who may request such services in the future. [This] **Unless otherwise stated, this** chapter does not apply to similar services[, such as self-directed day habilitation,] that may be [offered using State funds only. Specific rules, which apply to children, are set forth at N.J.A.C. 10:46C-2.4] **provided through the Supports Program.**

10:46C-1.3 Definitions

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

...

["Community Care Waiver" or "CCW" means the Home and Community Based Services (HCBS) Waiver authorized by the Centers for Medicare and Medicaid Services (CMS) under section 1915(c) of the Social Security Act for people with developmental disabilities.

"Day program" means a community-based service, which addresses an individual's need for daytime activities as described in the individual's service plan.]

"Community Care Program" or "CCP" means a Division initiative, included in the Comprehensive Medicaid Waiver authorized by the Centers for Medicare and Medicaid Services under section 1115 of the Social Security Act, that funds community-based services and supports for adults with intellectual and developmental disabilities who meet the level of care for an Intermediate Care Facility for Individuals with Intellectual Disabilities.

...

["Emergency placement" means that placement, as defined in N.J.A.C. 10:46B, which is made when the individual is homeless or in imminent peril and the Division cannot provide adequate alternate services in the existing situation or provide for the individual's personal safety, and the Division has determined that there is no long-term placement available.

"Essential lifestyle plan" or "ELP" means a specific type of service plan that is consistent with the requirements of N.J.S.A. 30:6D-10 through 12, developed by the interdisciplinary team (IDT). It is an outcome-based planning tool that, at a minimum, identifies each individualized program or service requested by and provided to the individual, for which the individual demonstrates a need. It identifies the person or agency responsible for its implementation. The complexity of the service plan will vary according to the individual's interests, preferences, and needs.]

"Emergency" means an event in which an individual who is eligible for Division services is homeless or in imminent peril, as defined in N.J.A.C. 10:46B.

...

["In-home services" means Division services rendered to an individual residing in the individual's family home.

"Individual habilitation plan" or "IHP" means a specific type of service plan of intervention and action that is developed by the interdisciplinary team. It specifies both the prioritized goals and objectives being pursued by each individual and the steps being taken to achieve them. It may identify a continuum of skill development that outlines progressive steps and the anticipated outcomes of services. The IHP is a single plan that encompasses all relevant components, such as an education plan, a

program plan, a rehabilitation plan, a treatment plan, and a health care plan. The complexity of the IHP will vary according to the needs, capabilities, and desires of the person. For an individual who has been determined by an interdisciplinary team to require active treatment, the IHP shall address all needs identified. For an individual who makes only specific service requests, the IHP shall be a service plan, which addresses only those specific requests.]

“Individualized service plan” or “ISP” means a standardized service planning document developed based on an individual’s assessed needs that identifies an individual’s outcomes and describes the services needed to assist the individual in attaining the outcomes identified in the plan. An approved ISP authorizes the provision of services and supports.

...

“Legal guardian” means a person or agency appointed by a court of competent jurisdiction [or otherwise legally authorized and responsible to act on behalf of a minor or incapacitated adult, to assure provision for the health, safety, and welfare of the individual and to protect the individual’s rights] **to make decisions on behalf of an individual determined by the court to lack decision-making capacity in certain areas as set forth at N.J.S.A. 3B:12-24.1.**

...

“Out-of-home services” means Division services rendered to an individual residing in a community setting other than the individual’s family home (for example, group home, supervised apartment, community care residence, etc.)]

“Qualified provider” means a service provider who has met all qualifications for providing Division services through the [CCW] CCP.

“Regional offices” means that component of the Division, which provides intake, referral, and an array of community-based day and residential services. DDD regional offices serve four geographical areas of the State, which are: northern, upper central, lower central, and southern. Regional offices are sometimes referred to as Community Services Regional Offices.

“Service plan” means a written, individualized plan, consistent with the requirements of N.J.S.A. 30:6D-10 through 12, developed by the IDT. It is an outcome-based planning tool that, at a minimum, identifies each individualized program, support, or service requested by and provided to the individual, for which the individual demonstrates a need. It identifies the person or agency responsible for its implementation. The complexity of the service plan will vary according to the individual’s interests, preferences, and needs. The service plan format must be Division-approved but can be chosen from various types of plans, as determined by the requirements of the specific program, service, or support and can include, but is not limited to, the following types of plans: individual habilitation plan or essential lifestyle plan.

“Supports” means those services, other than residential services provided by the Division, which will help the individual remain in the individual’s living situation.]

“Support coordinator” means the professional responsible for developing and maintaining the individualized service plan with the individual, his or her family, as applicable, and other interdisciplinary team members; linking the individual to needed services; and monitoring the provision of services included in the individualized service plan.

“Supports program” or “SP” means a Division initiative, included in the Comprehensive Medicaid Waiver authorized by the Centers for Medicare and Medicaid Services under section 1115 of the Social Security Act, that funds community-based services and supports for adults with intellectual and developmental disabilities.

...

SUBCHAPTER 2. WAITING LIST PROCEDURES

10:46C-2.1 Waiting list categories

(a) At the time of eligibility for Division services, the applicant shall be informed of the [CCW] CCP waiting list.

(b) (No change.)

(c) The Division shall provide individuals on the Priority Waiting List with their numerical place on the waiting list [annually] **annually.**

10:46C-2.2 Procedure for adding an individual to a waiting list or changing the individual’s waiting list category

(a) Satisfaction of one or more of the following criteria is required for assignment to the Priority Waiting List:

1. Both of the birth or adoptive parents are 55 years or older. When both parents or adoptive parents reach age 55, they shall be given the option to have the individual placed on the Priority Waiting List at the time of the annual [IHP] **ISP**. In this instance, the date that the younger parent turns 55 shall be the date the individual is added to the Priority Waiting List. In situations where both parents are alive, but only one is the primary caregiver, it is only required that the parent who [has sole custody] **acts as the primary caregiver** reach age 55 to have the option to have the individual placed on the Priority Waiting List at the time of the annual [IHP] **ISP**;

2.-5. (No change.)

(b) (No change.)

(c) The individual, legal guardian, parent, or caregiver may request a reassessment of the waiting list assignment at any time. Requests for changes in the waiting list category shall be made in writing, or by alternate means used by the individual to communicate. If the request is approved, the change shall be made effective as of the date of the written request or request by alternate means.

1. The following types of requests for changes to the individual’s waiting list category shall be processed by the [regional] **Division** waiting list coordinators and will not require a [WRT] **Waiver Review Team** meeting:

i. Requests for the Priority Waiting List, under the following circumstances:

(1) Both birth or adoptive parents are over the age of 55 or the birth or adoptive parent, with whom the individual resides, is over the age of 55. In this instance, the date that the younger parent or the parent with whom the individual resides turns age 55 shall be the date the individual is added to the Priority Waiting List. If the date the parent turns 55 predates eligibility for functional Division services, the [child’s] **individual’s** effective date on the Priority Waiting List shall be the date of Division eligibility; **or**

(2) An individual living with a person other than the birth or adoptive parents, who is providing care voluntarily and without pay, and the caregiver can no longer provide care for the individual. The effective date of the addition to the Priority Waiting List will be the date of the written request, or request by alternate means used by the individual to communicate; **[or] and**

[(3) An individual was residentially placed by the Division of Youth and Family Services (DYFS) or by a New Jersey Local Education Authority (LEA). The effective date of the addition to the Priority Waiting List will be governed by N.J.A.C. 10:46C-2.4; and]

ii. (No change.)

(d) All requests to be added to the Priority Waiting List, under (a) above or to change from the General Waiting List to the Priority Waiting List, other than those in (c)1 above will be processed through the WRT. The WRT shall be responsible to review the information in order to determine if the criteria for assignment to the Priority Waiting List are met. [There shall be at least one WRT for each region, which] **The WRT shall meet [no less than monthly] as needed, as determined by the waiting list coordinator,** and shall have at least three members present to conduct business.

(e) Case management **or the support coordinator, as applicable,** shall provide all relevant information to the WRT. [Additional] **The WRT may request additional information and may [be] request[ed] by the WRT, as needed, and] that a case [management] manager or support coordinator visit [to] the home [may be required].**

(f) Case management **or the support coordinator, as applicable,** will inform the individual, legal guardian, parent, or caregiver [of their] **that he or she has the option to attend the initial WRT meeting.** [At the initial meeting the case manager will present the request to the WRT.]

1. (No change.)

2. If the WRT feels further information is needed **to determine if an individual may be added to the Priority Waiting List,** case management **or the support coordinator, as applicable,** will obtain this information from the [requestor] **person making the request to add an**

individual to the Priority Waiting List in writing, or by alternate means used by the individual to communicate. Once received, the new information will be presented to the WRT. If, after the second review, the WRT agrees that the request meets all criteria as stated in (a) above, the effective date of the addition to the Priority Waiting List will be the date of the original written request, or request by alternate means used by the individual to communicate.

(g)-(h) (No change.)

(i) At the next available WRT, the individual, legal guardian, parent, caregiver, case manager **or support coordinator**, and invited family may make a presentation, verbal or written, regarding the individual's particular situation. The case manager **or support coordinator** shall document and present prior [acts] **actions** implemented [by the Division] to stabilize the individual in the individual's current situation. The individual, legal guardian, parent, or caregiver shall leave the meeting once they have presented their views. [Alternate] **The WRT shall provide participants at the meeting alternate** means of communication [shall be provided], as necessary.

(j) (No change.)

10:46C-2.3 Initial notification that an individual has been reached on the Priority Waiting List for Community Care [Waiver] **Program Services**

(a) When an individual is reached chronologically on the Priority Waiting List, the Division shall notify the individual or legal guardian in writing, or by alternate means used by the individual to communicate. In addition, [regional case management] **the Division** will contact the individual or legal guardian to further explain the process and [offer the individual a choice between receiving in-home or out-of-home services] **discuss CCP and SP services and options.**

[1. For individuals who choose in-home services:

i. A service plan shall be developed with the individual and shall be approved by Division staff.

ii. If the individual is already receiving services, the individual will be given the option of retaining those services or seeking new services. If the services being received are not qualified-CCW services, the Division shall contact the provider to request that the provider become a qualified provider.

iii. An attempt to locate the requested services from providers shall be made. Respondents to the request for services will be checked for qualifications to ensure that they can provide the services requested.

iv. The services that have been secured for the individual will be recorded.

2. For individuals who choose out-of-home services:

i. Division staff shall, to the best of their ability, based on resources and availability, attempt to find the most appropriate placement for the individual.

ii. Out-of-home services shall follow the procedures in N.J.A.C. 10:46B.]

1. An individual must meet the level of care (LOC) requirements for an Intermediate Care Facility for Individuals with Intellectual Disabilities to be eligible to enroll in the CCP. Individuals who do not meet the LOC requirements will receive services through enrollment in the SP.

2. Case management or the support coordinator, as applicable, will coordinate the development of a new individualized service plan, if needed.

(b) (No change.)

(c) Upon being reached on the Priority Waiting List, the individual or legal guardian shall be responsible for applying for all benefits for which [they are] **the individual is** entitled, in compliance with the provisions of N.J.A.C. 10:46, prior to receiving services from the Division. Application for benefits includes, but is not limited to, applying for the Medicaid DDD Community Care [Waiver (CCW)] **Program (CCP)** and Social Security and Supplemental Security Income (SSI).

1. If the individual is determined to be ineligible for the Community Care [Waiver] **Program**, the individual shall be removed from the Priority Waiting List and shall be ineligible to receive services the Division provides through the [CCW] CCP.

i. The individual shall remain eligible to receive those services the Division provides through [State-only funding] **the Supports Program**, subject to annual appropriations.

2. If the individual is able to establish eligibility for the Community Care [Waiver] **Program** within six months of the date he or she was determined ineligible, the individual shall be placed back on the Priority Waiting List with his or her original date of assignment to the Priority Waiting List.

3. If the individual is unable to establish [CCW] CCP eligibility within six months, the individual shall be removed from the Priority Waiting List and may apply to the WRT for a new assignment to the Priority Waiting List, pursuant to N.J.A.C. 10:46C-2.2.

(d) In order **for the Division** to enroll **an individual** in the [CCW] **CCP, the Division must have** funding [must be] available to provide waiver services for the individual and the individual must be eligible for functional services in accordance with the provisions of N.J.A.C. 10:46.

(e) When an individual is reached chronologically on the Priority Waiting List and accepts an offer of services, the individual or legal guardian must complete the [CCW] CCP application [and], submit all required documentation [including], **and participate in** the development of [a] **an individualized** service plan before services begin.

[10:46C-2.4 Children for whom services are requested

(a) The Division shall assign any child placed residentially by a New Jersey Local Education Authority (LEA) to the Priority Waiting List. Placement on the list shall be based on the date that the child was residentially placed by the LEA, or no less than three years before the child's educational entitlement ends, whichever date is earlier. If the placement date by the LEA predates eligibility for functional Division services, the child's effective date on the Priority Waiting List shall be the date of eligibility for Division services. The anticipated need for services shall be reviewed annually at the time of the service plan review. The Division shall not assume responsibility for services until the child's educational entitlement ends.

(b) The Division shall assign any child residentially placed by the Division of Youth and Family Services (DYFS) to the Priority Waiting List. Placement on the list shall be based on the date that the child was residentially placed by DYFS. If the placement date by DYFS predates eligibility for functional DDD services, the child's effective date on the Priority Waiting List shall be the date of DDD eligibility. The anticipated need for services shall be reviewed annually at the time of the service plan review. The Division shall not assume responsibility for services until the child's 21st birthday or until the child's educational entitlement ends, whichever is later.]

10:46C-[2.5]2.4 Removal from the Priority Waiting List

(a) When an individual begins receiving [CCW] CCP services and has complied with the Division's requirement of applying for the [CCW] CCP and meeting all requirements of eligibility for those benefits, the individual's name shall be removed from the Priority Waiting List.

(b) If, upon being reached on the Priority Waiting List, an individual or legal guardian refuses any and all offers for [CCW] CCP services, the individual's name shall be removed from the Priority Waiting List. The Division shall provide written notification, or notification by alternate means used by the individual to communicate, of the removal from the Priority Waiting List to the individual.

(c) If, upon being reached on the Priority Waiting List, the individual or legal guardian refuses to apply for the [CCW] CCP or is found ineligible for the [CCW] CCP, the individual's name shall be removed from the Priority Waiting List. The Division shall provide written notification, or notification by alternate means used by the individual to communicate, of the removal from the Priority Waiting List to the individual. In the case of [CCW] CCP ineligibility, N.J.A.C. 10:46C-2.3(c) shall apply.

(d) If, upon being reached on the Priority Waiting List, the individual does not elect to enroll in the CCP, or is not otherwise eligible for CCP services, the Division will offer the individual the option to elect enrollment in the Supports Program, if the individual is not already enrolled in SP, and the individual's name shall be removed from the Priority Waiting List. The Division shall provide the individual, or his or her guardian, with written notification or

notification by alternate means used by the individual to communicate, of the individual's removal from the Priority Waiting List.

(c) An otherwise eligible individual who has been removed from the Priority Waiting List may obtain access to CCP services in the future, if emergency criteria are present.

10:46C-[2.6]2.5 Emergencies

(a) (No change.)

(b) When the **Division** [regional administrator] determines that an emergency exists, the individual shall be administratively placed [on] **at the top of** the Priority Waiting List. [The effective date on the Priority Waiting List shall be the date of the emergency determination.]

10:46C-[2.7]2.6 Appeals

(a) If the individual or legal guardian disagrees with the [CCW] CCP waiting list categorization or the services offered, that decision may be appealed in accordance with N.J.A.C. 10:48.

(b) (No change.)

LABOR AND WORKFORCE DEVELOPMENT

(a)

PUBLIC SAFETY AND OCCUPATIONAL SAFETY AND HEALTH

Boilers, Pressure Vessels, and Refrigeration Systems

Proposed Amendments: N.J.A.C. 12:90-3.12, 3.13, 4.8, 4.12, 4.13, 4.14, 5.9, 5.15, 5.16, 6.4, 6.5, 8.2, 8.15, and 8.19

Authorized By: Robert Asaro-Angelo, Commissioner, Department of Labor and Workforce Development.

Authority: N.J.S.A. 34:7-18 and Reorganization Plan No. 002-2002.

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

Proposal Number: PRN 2019-137.

A **public hearing** on the proposed amendments will be held on the following date at the following location:

Thursday, November 7, 2019

10:00 A.M. to 12:00 Noon

New Jersey Department of Labor and Workforce Development
John Fitch Plaza

3rd Floor Large Conference Room

Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 777-2960 if you wish to be included on the list of speakers.

Submit written comments by December 20, 2019, to:

David Fish, Executive Director

NJ Department of Labor and Workforce Development

PO Box 110-13th Floor

Trenton, New Jersey 08625-0110

david.fish@dol.nj.gov

The agency proposal follows:

Summary

P.L. 2003, c. 117, codified in pertinent part at N.J.S.A. 34:7-3, 14, 15, 16, 19, and 25, sets fees pertaining to boilers, pressure vessels, and refrigeration systems for fiscal years 2003-04 and 2004-05 and instructs that after fiscal year 2004-05, "such fees may be adjusted by the Commissioner of Labor (and Workforce Development) in accordance with fee schedules adopted by regulation." Pursuant to the fee adjustment provision in P.L. 2003, c. 117, the Department is proposing to amend N.J.A.C. 12:90, the rules pertaining to boilers, pressure vessels, and refrigeration systems, so as to double the fees charged under the chapter

for (1) filing by prospective inspectors of applications for a New Jersey Certificate of Competency; (2) renewal of Certificates of Competency; (3) registration of reports of welded repairs and alterations to boilers (4) shop inspections; (5) field inspections; (6) replacement of damaged, altered, defaced, or lost certificates; (7) construction review of vessels not designed in accordance with American Society of Mechanical Engineers (ASME) standards; (8) registration of unfired pressure vessels; (9) application for examinations and issuance of licenses for operating engineers and firemen; and (10) renewal of licenses for operating engineers and firemen.

The Bureau of Boiler and Pressure Vessel Compliance (Bureau) within the Department of Labor and Workforce Development (Department) is currently responsible by law for the inspection of approximately 50,000 boilers, pressure vessels, and refrigeration systems (objects) per year, a number that is more than three times the number of objects the Department was responsible to inspect the last time these fees were increased in 2006. At current staffing levels, the Bureau is only equipped to inspect a total of approximately 25,687 objects per year, which is triple the inspections occurring in 2006, yet still 24,313 short of the number of objects the Department needs to inspect. Additionally, the Department needs to increase the fees to enable it to review and process license applications for engineers and equipment operators, which amounted to 12,643 license applications in 2018. The license applications are in addition to the number of inspections the Department is required to conduct. Thus, the Department needs to double the fees to address the tripling of the workload over the last 13 years and to ensure that owners, operators, and the general public are not put at risk by dangerous equipment. The proposed fee increases are necessary and required for safety reasons, and are reasonable in amounts when compared to the significant increase in workload already experienced by the Department.

Moreover, the population of the State continues to grow annually. Along with that increase in population, comes an increase in the number of businesses within the State that contain boilers, pressure vessels, and refrigeration systems requiring inspection under the law. For example, most types of industry (small, medium, and large) are housed in buildings containing boilers, pressure vessels, and/or refrigeration systems. Public and private schools all contain boilers, pressure vessels, and/or refrigeration systems, as do churches, apartment buildings, office buildings, hotels, motels, hospitals, elder care facilities, child care facilities, colleges and universities, correctional facilities, warehouses, self-storage facilities, supermarkets, and indoor auditoriums. Even many small businesses, like dry cleaners, mortuaries, spas, sports clubs, and car washes contain boilers, pressure vessels, and/or refrigeration systems that require inspection. In order to fulfill its statutory obligations pertaining to the inspection of boilers, pressure vessels, and refrigeration systems, which require additional inspectors, and the licensing of engineers and equipment operators, which require additional examiners, the Department is proposing the fee increases set forth below.

Specifically, the Department is proposing to amend N.J.A.C. 12:90-3.12(b), (c), and (d), so as to increase the fee from \$100.00 to \$200.00 for the filing of applications for a New Jersey Certificate of Competency by persons who (1) seek to perform boiler inspections under the requirements of N.J.A.C. 12:90-4.10 and 5.14; (2) seek to perform only shop inspections; and (3) seek to perform only owner-user inspections under N.J.A.C. 12:90-5.12, 5.13, or 5.14.

The Department is proposing to amend N.J.A.C. 12:90-3.13(b), so as to increase the fee from \$40.00 to \$80.00 for a one-year renewal of a Certificate of Competency and from \$80.00 to \$160.00 for a three-year renewal of a Certificate of Competency. The Department is also proposing to amend N.J.A.C. 12:90-3.13(d), so as to increase the fee from \$20.00 to \$40.00 for the transfer of a Certificate of Competency from one authorized inspection agency to another authorized inspection agency.

The Department is proposing to amend N.J.A.C. 12:90-4.8(g), so as to increase the fee from \$4.00 to \$8.00 for registration with the Bureau of Boiler and Pressure Vessel Compliance of an alteration report and a copy of the original manufacturer's data report for each welded repair or alteration to boilers.

The Department is proposing to amend N.J.A.C. 12:90-4.12(a), so as to double the fee for a shop inspection. Specifically, the rule currently indicates that the fee for a shop inspection shall be the higher of either: