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*** New Jersey Register, Vol. 46 No. 8, April 21, 2014 ***

TITLE 10. HUMAN SERVICES
CHAPTER 140. PERSONAL ASSISTANCE SERVICES PROGRAM

N.J.A.C. 10:140 (2014)

Title 10, Chapter 140 -- Chapter Notes

CHAPTER AUTHORITY:

N.J.S.A. 30:4G-21.

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2009 d.71, effective January 30, 2009.

See: 40 N.J.R. 4668(a), 41 N.J.R. 1052(a).

CHAPTER EXPIRATION DATE:

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 140, Personal Assistance Services Program, expires on January 30, 2016. See: 43 N.J.R. 1203(a).

CHAPTER HISTORICAL NOTE:

Chapter 140, Personal Assistance Services Program, was originally codified in Title 10 as Chapter 123A, Personal Attendant Services Program. Chapter 123A was adopted as R.1992 d.314, effective August 17, 1992. See: 23 N.J.R. 2091(b), 24 N.J.R. 2914(a).

Pursuant to Executive Order No. 66(1978), Chapter 123A, Personal Attendant Services Program, was readopted as R.1997 d.361, effective August 11, 1997, and the chapter was renamed Chapter 123A, Personal Assistance Services Program, Subchapter 5, Personal Attendants, was renamed Subchapter 5, Personal Assistants, and Subchapter 6, Consumer Information and Personal Assistant Training, was adopted as new rules by R.1997 d.361, effective September 2, 1997. See: 29 N.J.R. 1456(a), 29 N.J.R. 3883(a).

Chapter 123A, Personal Assistance Services Program, was recodified as N.J.A.C. 10:140, effective March 1, 1999. See: 31 N.J.R. 687(a).

Chapter 140, Personal Assistance Services Program, expired on August 11, 2002.

Chapter 140, Personal Assistance Services Program, was adopted as new rules by R.2003 d.302, effective August 4, 2003. See: 35 N.J.R. 1253(a), 35 N.J.R. 3583(a).

Chapter 140, Personal Assistance Services Program, was readopted as R.2009 d.71, effective January 30, 2009. See: Source and Effective Date.

Subchapter 4, Contracting and Fees, was renamed Individual Budgets and Fees by R.2012 d.079, effective April 16, 2012. See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

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TITLE 10. HUMAN SERVICES
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SUBCHAPTER 1. GENERAL PROVISIONS

N.J.A.C. 10:140-1.1 (2014)

§ 10:140-1.1 Purpose

(a) Pursuant to the provisions of N.J.S.A. 30:4G-13 et seq., the Department of Human Services provides support to individuals with permanent physical disabilities in meeting their daily needs for personal care and assistance with activities of daily living in order to live independently within their community. The Personal Assistance Services Program, administered by county designated agencies in each of New Jersey's 21 counties and within the limits of funds appropriated or otherwise made available to it, shall assist self-directed adults with permanent physical disabilities to:

1. Be employed in a paid occupation;
2. Receive training or education related to employment; or
3. Actively participate in community-based independent living (that is, volunteering).

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

In the introductory paragraph of (a), substituted "permanent" for "chronic" twice; and in (a)3, inserted "(that is, volunteering)".

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N.J.A.C. 10:140-1.2 (2014)

§ 10:140-1.2 Scope

The rules of this chapter apply to all activities and persons participating in the Personal Assistance Services Program, including, but not limited to, the designated State contracting agency, applicants, consumers, their employees, county agencies administering the program and vendors providing services.

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

Substituted "The rules of this chapter" for "These rules", "their employees," for "personal assistants, and", and "vendors providing services" for "subcontracted provider agencies", and deleted a comma following "program".

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N.J.A.C. 10:140-1.3 (2014)

§ 10:140-1.3 Personal Assistance Consumer Bill of Rights

(a) Each consumer, and, as appropriate, each applicant:

1. Shall be treated with courtesy, respect, and full recognition of one's dignity, individuality, and right to control one's own household and lifestyle, including the identification and determination of one's own needs, schedules and the services necessary to meet these needs;

2. Shall be served by personal assistants and/or vendors who are properly trained and competent to perform their duties;

3. Shall receive services in compliance with all State laws and regulations without discrimination based on race, religion, gender, age, creed or disability in the provision or quality of services;

4. Shall be free from mental and physical abuse, neglect and exploitation, and shall be free from chemical and physical restraints;

5. Shall be accorded privacy while receiving services, in communications and in all daily activities;

6. Shall be accorded respect for one's property rights;

7. Shall have one's personal, financial and medical records treated as confidential;

8. Shall be free to fully exercise one's civil and due process rights and to be assisted by a personal assistant and/or vendor as appropriate and necessary;

9. Shall receive in a timely manner all decisions regarding eligibility and amount and kind of services and the reasons therefore in writing and, if appropriate, orally, along with the administrative hearings and appeals procedure;

10. Shall have access to a fair appeals process through which disputes can be resolved;

11. Shall receive written information regarding consumer standards and responsibilities in the Personal Assistance Services Program and shall have them verbally explained as needed;

12. Shall have as few personal assistants entering one's home as possible;

13. Shall have the right to interview, screen and select one's personal assistant; and

14. Shall dismiss those personal assistants who do not respect consumer rights.

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

In (a)2, inserted "and/or vendors"; and in (a)8, inserted "and/or vendor".

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N.J.A.C. 10:140-1.4 (2014)

§ 10:140-1.4 Definitions

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

"Administrative hearing" means a hearing held by the Office of Administrative Law (OAL) pursuant to N.J.S.A. 52:14B-9 et seq., N.J.S.A. 52:14F-1 et seq., N.J.A.C. 1:1-1 and N.J.A.C. 10:6.

"Administrative review" means an independent examination of an agency action that is conducted by the State Program Administrator or designee, by convening a meeting of the relevant parties in the action under dispute and/or by examining the relevant records and documents in accordance with N.J.A.C. 10:6-1.4.

"Adverse agency action" means the denial, reduction, suspension or termination of services, or the denial of a request for an exception, or the failure to act upon a request for services within prescribed time frames.

"Advisory Council" means the State Consumer Advisory Council on Personal Assistance Services, created by N.J.S.A. 30:4G-20.

"Applicant" means a person who applies for services under the Personal Assistance Services Program.

"Assessor" means a person who is employed by the program to conduct eligibility assessments and has a master's of social work degree; a bachelor's degree and three years of experience in rehabilitation services; or is a registered nurse with a bachelor of science degree in nursing.

"Available" means, as applied to a caregiver, physically present, able, and appropriate, as determined with full consideration of the consumer's personal situation.

"Cash management plan" or "CMP" means to the document used by the Personal Assistance Services Program, which indicates the monthly cash allowance and details the services and supports required by the consumer in order to meet their personal care needs.

"Chore service" means light housekeeping activities. This service does not include inside or outside maintenance of the dwelling or property.

"Chronic physical disability" means a severe impairment of a permanent nature which so restricts a person's ability to perform essential activities of daily living that the person needs assistance to maintain the person's independence and health.

"Commissioner" means the Commissioner of the Department of Human Services.

N.J.A.C. 10:140-1.4

"Community-based independent living" means self-directed living whereby a consumer is actively participating in community-based activities aside from employment or education, including, but not limited to, assistance with parenting tasks, searching for employment, volunteer or community service, participation on governing boards and/or serving on committees.

"Consumer" means an individual who is currently receiving services and who meets the eligibility standards of N.J.A.C. 10:140-2.1, has received an exception under N.J.A.C. 10:140-2.2 or the criteria has been set aside by the Commissioner based on an emergent circumstance, as determined on a case-by-case basis.

"Consumer directed services" means a model of service delivery that affords the opportunity for individuals to control and manage all aspects of the services that they receive including, but not limited to, from whom the services are received, what types of services are received and when, where and how they are received.

"County designated agency" means a county office for the disabled or other agency designated by the county government to administer in that county the Personal Assistance Services Program established pursuant to N.J.S.A. 30:4G-13 et seq. and this chapter.

"Department" means the Department of Human Services.

"Designated State agency" means a division, bureau or office of State government, designated by the Commissioner of the Department of Human Services. The program is currently administered by the Division of Disability Services.

"Designated training agency" means the agency responsible for the administration of the Statewide training program, as provided by N.J.A.C. 10:140-6, under contract with the designated State agency.

"Direct services" means the performance of assessments, reassessments and follow-up visits by a qualified assessor and/or the provision of personal assistance services to consumers.

"Division" or "DDS" means the Division of Disability Services, in the Department of Human Services.

"Education or training" means enrollment in courses or training programs related to the enhancement of a worker's employment.

"Emancipated minor" means an individual who is under age 18 and is married and living separate and apart from his or her parents and/or guardian; or who is under age 18 and is determined through a court order to be capable of making his or her own decisions.

"Employment" means working in a paid occupation, whether in cash or in kind, including, but not limited to, full time employment; part time employment; the practice of a profession; self-employment; farm work; home-based employment; or other gainful work.

"Fiscal intermediary service organization" or "FISO" means a company or agency that is set up to disburse the cash benefit to consumers under the Personal Assistance Services Program. The latter will serve as the business agent for the consumer and prepare the payroll checks and other disbursements at the direction of the consumer, as well as keep records of all transactions.

"Household" shall be determined to be the individual consumer and any dependents as defined by the Internal Revenue Service under Title 26 of the United States Tax Code.

"Informal caregiver" means an individual who is 18 years of age or older residing in the household for other than the purpose of sharing expenses.

"Parenting" means routine child rearing activities performed for a minor child under the age of five in circumstances where those activities are obligated by law and the failure of the parent to perform such activities would constitute neglect under State law.

"Permanent physical disability" means a severe impairment of an ongoing nature, which so restricts a person's ability to perform essential activities of daily living that the person needs assistance to maintain the person's independence and health.

"Personal assistance service" means health and chore-related tasks performed by a personal assistant. Personal assistance services include, but are not limited to, assistance in essential daily activities, such as bathing, dressing and

feeding; assistance with light housekeeping activities, such as laundry, shopping and meal preparation; assistance with paperwork and communication; and assistance with mobility, including driving or other forms of transportation.

"Personal assistant" means a person who meets the qualifications with regard to training, equivalent work experience or certification in the provision of personal assistance services, as established by N.J.A.C. 10:140-5 and who provides personal assistance services to a consumer.

"Program" means the Personal Assistance Services Program.

"Relative" means a person who is 18 years of age or older and is related to the consumer by blood or by law.

"Resident" means a person who abides or resides in the State of New Jersey for other than a temporary purpose and who has no present intention of moving from the State.

"Self-directing or self-directed" means a person who is able to make decisions regarding daily activities, to make major life decisions, and to manage and supervise a personal assistant; and who can accept the responsibility for those decisions and actions.

"Statement of understanding" means a document which sets forth the terms and conditions of the program and the responsibilities of the consumer under these rules, and the consumer's acceptance of the same.

"State Program Administrator" means the professional employee of the designated State agency charged with the administration of the Personal Assistance Services Program.

"Time sheets" means a legal document that is issued by the fiscal intermediary service organization and used by the consumer to verify the number of hours received under the program and signed by the consumer's employee.

"Training" means the attendance and participation of a consumer or personal assistant in an established statewide educational program or equivalent, as described in N.J.A.C. 10:140-6.

"Vendor" means an agency or business that provides a service under the Personal Assistance Services Program, that satisfy the needs and requirements of a consumer, including, but not limited to, a cleaning service and/or a laundry service.

"Volunteering" is the practice of people working on behalf of others or a particular cause without payment for their time and services.

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

In definition "Assessor", substituted a semicolon for ", or" following "social work degree" and substituted "; or" for ", or" following "rehabilitation services"; added definitions "Cash management plan", "Consumer directed services", " 'Division' or 'DDS' ", " 'Fiscal intermediary service organization' or 'FISO' ", "Household", "Parenting", "Permanent physical disability", "Vendor" and "Volunteering"; in definition "Community-based independent living", substituted "assistance with parenting tasks" for "homemaking, parenting," and "and/or" for a comma, and inserted "or community"; rewrote definitions "Consumer", "Personal assistance service" and "Time sheets"; in definition "County designated agency", deleted ", pursuant to N.J.S.A. 30:4G-13 et seq.," following "government", and inserted "established pursuant to N.J.S.A. 30:4G-13 et seq. and this chapter"; and in definition "Education or training", inserted "the enhancement of a worker's".

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N.J.A.C. 10:140-1.5 (2014)

§ 10:140-1.5 Target population and priority for services

(a) For the purposes of the Personal Assistance Services Program, the target population includes those persons who meet the eligibility standards established in N.J.A.C. 10:140-2.1.

(b) Prioritization for service delivery shall be determined by the county designated agency in the following order of priority, for consumers who are:

1. Employed in a paid occupation;
2. Receiving training or education related to employment; or
3. Actively participating in community-based independent living (that is, volunteering).

i. A consumer shall volunteer for a minimum of 20 hours a month and provide supporting documentation upon request of the program.

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

(c) All consumers shall provide the Division with verifiable documentation of their respective qualifying program activity as set forth in (b)1 through 3 above. Failure to provide documentation shall render the individual to be ineligible for continued services under the program.

(d) The following activities shall not be considered as qualifying program activity under the PASP:

1. Participation in an avocation or hobby;
2. Parenting or child rearing activities not covered by N.J.A.C. 10:140-4.1; and
3. Homemaking.

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

In the introductory paragraph of (b)3, inserted "(that is, volunteering)"; added (b)3i and (b)3ii; rewrote (c); and added (d).

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SUBCHAPTER 2. ELIGIBILITY

N.J.A.C. 10:140-2.1 (2014)

§ 10:140-2.1 Eligibility standards

(a) For the purposes of the Personal Assistance Services Program, an eligible applicant or consumer shall meet the following standards, except as noted in N.J.A.C. 10:140-2.2:

1. An eligible applicant or consumer shall be from the age of 18 through the age of 70 and shall have a permanent physical disability;

2. An eligible applicant or consumer shall be a resident of the State of New Jersey and must reside within the geographic boundaries thereof in order to qualify for services. Residency shall be determined by physical domicile in New Jersey.

3. An eligible applicant or consumer shall be in need of personal assistance services pursuant to a written personal assistance services plan, prepared by the applicant or consumer, and approved by the staff of the county designated agency;

4. An eligible applicant or consumer shall be one who is self-directed and capable of managing and supervising his or her personal assistance services, as determined by an assessment conducted by an assessor;

5. A relative or other informal caregiver is not available to provide the services that the consumer needs;

6. An eligible applicant or consumer shall live, or plan to live upon becoming eligible, in a private house or apartment, group home, educational facility (for example, dormitory or campus apartment), rooming or boarding house, residential health care facility or an alternative housing arrangement acceptable to the Division for the purposes of the Personal Assistance Services Program; and the personal assistance services that the eligible applicant or consumer receives are supplemental to, and not duplicative of, services provided to the person in the rooming or boarding house, group home, educational facility, transitional housing or residential health care facility pursuant to licensure requirements. Individuals who reside in, or are a patient in a facility or setting where personal care services are the responsibility of those entities shall be ineligible for the Personal Assistance Services Program. An exception to this paragraph may be granted by the Division Director in circumstances where personal care services are not being provided by the facility and the individual meets all other requirements of this chapter;

7. The attending physician for the eligible applicant or consumer shall confirm in writing that he or she has a permanent physical disability and is capable of self-direction, and that the personal assistance services will be appropriate to meet the eligible applicant or consumer's needs; and

8. The eligible applicant or consumer shall receive no more than 40 hours per week of personal assistance services from the program in combination with any other program. Exceptions to this paragraph may be granted by the Division

Director to individuals who can demonstrate the need for additional hours and demonstrate that the absence or loss of the services would constitute a clear risk to health and safety.

(b) Consumers must utilize any Federally funded programs for which they are entitled before receiving services from the program.

(c) The Division must operate the Personal Assistance Services Program within its financial appropriation and may suspend the enrollment of consumers or truncate the hours provided to consumers as financial restrictions/limitations require.

(d) In circumstances where requests for services exceed program resources, the Division shall invoke an order of selection to prioritize the order in which resources will be used to provide services to existing consumers. The order of selection shall be based on the qualifying program activities set forth at N.J.A.C. 10:140-1.5(b).

(e) Services available under the program are limited to those services related to personal care. The Division has no obligation to fund or facilitate a consumer's ability to comply with program rules by providing other services or accommodations.

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

1. Maintaining qualifying activity in accordance with this chapter;
2. Complying with the payment of cost share in accordance with N.J.A.C. 10:140-4.3; and
3. Complying with the training requirements in accordance with N.J.A.C. 10:140-6.1.

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

In (a)1, substituted "70" for "65" and "permanent" for "chronic"; in (a)2, substituted "and must reside within the geographic boundaries thereof in order to qualify for services. Residency shall be determined by physical domicile in New Jersey." for a semicolon at the end; in (a)5, substituted "is not" for "shall not be" and deleted "eligible applicant or" preceding "consumer"; rewrote (a)6 through (a)8; and added (b) through (f).

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N.J.A.C. 10:140-2.2 (2014)

§ 10:140-2.2 Exceptions to eligibility standards

(a) Exceptions to the eligibility standards in N.J.A.C. 10:140-2.1(a)1, 6 and 8 may be granted as follows:

1. The applicant or consumer must initiate the request for an exception;
2. The county designated agency shall review the request on a case-by-case basis and make a recommendation to the State Program Administrator as to whether such exception should be allowed; and
3. The State Program Administrator shall make the determination whether to allow the exception. Upon receiving notice from the State Program Administrator, the county designated agency shall notify the applicant or consumer of the determination.

(b) In making the recommendations and determinations on exception requests under (a) above, the county designated agency and the State Program Administrator shall:

1. Give consideration to the request presented by the applicant or consumer;
2. Require a showing of unusual or emergent circumstances;
3. Give consideration based on funding available;
4. Give consideration to other services received by the consumer or applicant through other funding sources; and
5. Give consideration to the facts presented on a case-by-case basis.

(c) In granting an exception to N.J.A.C. 10:140-2.1(a)1, the following standards shall be applied for applicants who are under age 18.

1. The applicant shall be employed or attending a post-secondary educational or training program, or shall demonstrate active participation as a volunteer or in community service; and
2. The applicant shall provide written consent from his or her parent or guardian unless the applicant is determined to be an emancipated minor.

(d) In granting an exception to N.J.A.C. 10:140-2.1(a)1, the following standards shall be applied for consumers who are over age 70:

1. The consumer shall be employed or attending a post-secondary educational or training program, or shall demonstrate active participation as a volunteer or in community service;
2. The consumer shall provide documentation of his or her application and the results of that application, when available, for other similar services for which the consumer may be eligible;

3. The consumer shall be a current recipient of services under the Personal Assistance Services Program.

(e) In situations in which the request for an exception under N.J.A.C. 10:140-2.1(a)8 is made, and personal assistance services are provided to a consumer through a personal assistant who resides with the consumer, an exception shall not be granted.

(f) No individual may receive more than one exception to the program's age criteria set forth in N.J.A.C. 10:140-2.1(a)1.

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

In the introductory paragraph of (a), substituted "6" for "5" and deleted "above" following "8"; in the introductory paragraph of (d), substituted "70" for "65"; and added (f).

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N.J.A.C. 10:140-2.3 (2014)

§ 10:140-2.3 Procedures for requesting and granting exceptions to eligibility standards

(a) Eligible applicants or consumers requesting exceptions shall adhere to the following procedures:

1. Requests for exceptions pursuant to N.J.A.C. 10:140-2.2(a) shall be made in writing, or, where appropriate, verbally or through alternative communication methods;
2. The written request for an exception shall be made to the Division and shall indicate the specific exception requested and provide justification; and
3. Applicants or consumers who are unable to communicate in English or have a communication handicap may make arrangements with county designated agency for an alternative means for verifying their request for an exception. All other persons are required to verify their request in writing to the director of the county designated agency.

(b) The Division shall review the request and make a written recommendation to the State Program Administrator. The State Program Administrator shall make a determination and inform the county designated agency of the results within 30 days from the date that the request was received by the Division.

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

In (a)2, substituted "Division" for "director of the county designated agency"; and in (b), substituted "Division" for "director of the county designated agency" and for "county designated agency".

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SUBCHAPTER 3. SCREENING, SERVICES AND APPEALS

N.J.A.C. 10:140-3.1 (2014)

§ 10:140-3.1 Screening

(a) Upon applicant inquiry to the county designated agency regarding the Personal Assistance Services Program, county designated agency staff shall obtain information necessary to conduct pre-application screening and shall complete the screening within five working days of applicant inquiry.

(b) The applicant shall be notified in writing within five working days after completion of the county screening as to the results of the applicant's inquiry regarding participation in the Personal Assistance Services Program.

1. If the applicant is determined to be ineligible, the applicant shall be informed in writing of this determination and the right to appeal (see N.J.A.C. 10:120).

2. If the applicant appears eligible as a result of the screening, staff from the county designated agency shall inform the applicant in writing of this determination and if funding under the Personal Assistance Services Program is available to provide services to the applicant (see (c) below), shall enclose all documents necessary to process the application. The disposition letter shall also advise the applicant that the determination of initial eligibility does not guarantee services under this program.

(c) In the event the applicant appears to be eligible as a result of the screening, and Personal Assistance Services Program funding in the county designated agency is not presently available to provide services to the applicant, the applicant's name shall be placed on the waiting list maintained by the Division. The social and financial assessments, under N.J.A.C. 10:140-3.2, shall not be conducted at this time. Staff from the county designated agency shall inform the applicant in writing of this determination and advise the applicant that the documents necessary to process the application will be forwarded to the applicant when funding is available as determined by the Division. The social and financial assessments will be performed following completion of the application documents by the applicant. The position of the applicant's name on the waiting list shall be determined by the Division in accordance with the service priorities established under N.J.A.C. 10:140-1.5(b).

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

In (a), substituted "obtain" for "elicit"; and in (c), substituted "Division" for "county designated agency" throughout and deleted "county designated agency's" preceding the second occurrence of "waiting list".

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N.J.A.C. 10:140-3.2 (2014)

§ 10:140-3.2 Assessment

(a) The county designated agency shall arrange for a qualified assessor to perform an assessment within 30 days upon receipt of the application package, which includes the following:

1. An Application and Statement of Understanding;
2. An Income Declaration with proof of income;
3. A Physician's Certification; and
4. An Initial Consumer Plan of Service.

(b) Within 30 days of notification from the applicant of the completion of the application package, a qualified assessor, under (a) above, shall perform a social assessment of the applicant to determine if the applicant meets the eligibility criteria and to further determine the needs of the consumer.

(c) Within 30 days of notification from the applicant of the completion of the application package, a member of the staff of the county designated agency shall perform a financial assessment to determine the ability of the person or the person's spouse to pay for personal assistance services according to the sliding fee scale established pursuant to N.J.A.C. 10:140-4.3.

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

Rewrote the introductory paragraph of (a), in (a)4, substituted "An Initial" for "A"; and in (b), substituted "a qualified" for "the county designated" and inserted ", under (a) above," and "and to further determine the needs of the consumer".

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N.J.A.C. 10:140-3.3 (2014)

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

(a) The individual personal assistance services plan shall be designed by the consumer in consultation with the county designated agency to meet his or her individualized needs for personal assistance services.

(b) A personal assistance services plan shall include the following:

1. A list of the personal assistance services to be provided;
2. An estimate of the time needed and frequency of personal assistance services;
3. A list of individuals and/or vendors who will provide the services denoted in (b)1 above; and
4. An assessment of any cost share for which the consumer is to be responsible.

(c) The individual personal assistance services plan shall serve as the template for the creation of a consumer's cash management plan. The CMP shall serve as a budgetary document to show how a consumer's monthly cash allowance shall be utilized to meet the consumer's needs. A CMP must include at least:

1. The monthly cost and frequency of each service listed in (b)1 above;
2. The rate of pay that each individual or vendor named in (b)3 above; and
3. Other expenses that are mandated by the program as defined in N.J.A.C. 10:140-4.3(d) and 6.1(g).

(d) The county designated agency shall ensure that a social and financial reassessment is completed at 12-month intervals, or as often as necessary, commencing with the date of acceptance to the program. The social and financial reassessment shall be completed as follows:

1. The social reassessment shall be completed to determine if the consumer continues to meet the eligibility criteria pursuant to N.J.A.C. 10:140-2.1; and

2. The financial reassessment shall be completed to determine if the consumer is liable for cost share responsibilities, pursuant to N.J.A.C. 10:140-4.3.

(e) The consumer shall use no more than the monthly cash allowance authorized by the county designated agency under the approved cash management plan pursuant to (a) and (b) above. Cash allowance awarded to a consumer that remains unused after the end of the calendar year shall not accrue to the future use or benefit of that consumer, except to provide additional or emergency service hours. Requests from program consumers to use unspent funds to purchase additional service hours shall not be subject to appeal.

(f) Adjustments to increase the consumer's cash allowance shall be considered upon the request of the consumer, or shall be initiated upon the authorization of the county designated agency, subject to the availability of funding within the county designated agency.

(g) A consumer shall have only one active CMP at a time, but may revise their CMP monthly to adjust for changing needs.

(h) Cash management plans shall be developed by the consumer in consultation with the county designated agency, but shall not be considered to be active until approved by the State Program Administrator pursuant to (b) and (c) above.

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

Section was "Individual personal assistance services plan". Rewrote (a) through (f); and added (g) and (h).

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N.J.A.C. 10:140-3.4 (2014)

§ 10:140-3.4 Disposition of application

(a) The county designated agency shall notify the applicant in writing within 15 days from the date of completion of the assessment regarding the finding of the social and financial assessments performed pursuant to N.J.A.C. 10:140-3.2 and the applicant's right to appeal.

(b) If an applicant is determined eligible, in addition to (a) above the notification shall include the following:

1. An approved plan of service listing the services to be provided including an estimate of the time needed and frequency of personal assistance services;
2. An estimate of the total cost of the personal assistance services; and
3. If applicable, an estimate of the amount of money that the eligible consumer or that consumer's spouse is required to pay toward personal assistance services.

(c) In the event an applicant is determined eligible for the Personal Assistance Services Program and funding prohibits the start-up of services within 30 days from the date of the county designated agency notification to the applicant, pursuant to (a) and (b) above regarding the results of the social and financial assessments performed, such applicant shall be placed on a waiting list for services. An applicant's position on a waiting list shall be determined by the Division in accordance with N.J.A.C. 10:140-1.5(b).

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

In (c), substituted "Division" for "county designated agency".

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N.J.A.C. 10:140-3.5 (2014)

§ 10:140-3.5 Services

(a) Services provided to eligible consumers shall be supplemental to and not duplicative of services available through relatives, other informal caregivers or other service programs.

(b) For the purposes of the Personal Assistance Services Program, the following service standards shall be met:

1. Program funds shall not be used for skilled professional medical services, including the supervision of registered nurses. It is not the responsibility of the Personal Assistance Services Program to arrange for or provide skilled nursing, therapy or related medical care and treatment services that the eligible consumer may need;

2. Personal assistance services provided for the purpose of receiving training or education shall not replace or duplicate those services provided by an educational institution as mandated by Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; and

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

(c) Personal assistance services shall be suspended during a period of hospitalization and resumed automatically once the consumer is discharged to the consumer's community residence.

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

In (b)1, substituted "skilled professional medical" for "medically related", "that" for "which" and a semicolon for a period at the end, and deleted a comma following "therapy"; deleted former (b)2; recodified former (b)3 and (b)4 as (b)2 and (b)3; in (b)2, substituted "; and" for a period at the end; and deleted (d).

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N.J.A.C. 10:140-3.6 (2014)

§ 10:140-3.6 Exceptions to service standards

(a) Exceptions to the service standards in N.J.A.C. 10:140-3.5(a), (b)2 and 3 shall be:

1. Initiated by the applicant or consumer;
2. Reviewed on a case-by-case basis by the Division; and

3. Consumers have the right to appeal decisions regarding denials of the exception to the service standards. Appeals shall be challenges to the material facts of the case, and shall be made to the Division Director or designee, who shall be the ultimate authority to render a decision.

(b) Exceptions to the service standards in N.J.A.C. 10:140-3.5(c) and (d) shall be:

1. Initiated by the applicant or consumer;

2. Reviewed on a case-by-case basis by the county designated agency. The county designated agency shall make a recommendation to the State Program Administrator as to whether an exception should be allowed; and

3. The State Program Administrator shall notify the county designated agency of the determination. Upon receipt of the determination, the county designated agency shall then notify the applicant or consumer regarding the results of the decision rendered by the State Program Administrator.

(c) In making the recommendations and determinations on exception requests, the county designated agency and State Program Administrator shall:

1. Give consideration to the request presented by the applicant or consumer;
2. Require a showing of unusual or emergent circumstances;
3. Give consideration based on funding available;
4. Give consideration to other services received by the consumer or applicant through other funding sources; and
5. Give consideration to the facts presented on a case-by-case basis.

(d) For the purposes of granting exceptions to N.J.A.C. 10:140-3.5(c), the following standards apply:

1. Personal assistance services in the form of maintaining essential communications, advocacy, household, and home maintenance services shall be continued on a limited basis only when other relatives or informal caregivers are not available.

2. Personal care services shall not be provided under the Personal Assistance Services Program during a period of hospitalization.

3. In granting an exception, a temporary modification of the consumer plan of service shall be made with the county designated agency to reflect current needs.

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

In the introductory paragraph of (a), substituted "(b)2 and 3" for "(b)3 and (b)4"; in (a)2, substituted "Division" for "county designated agency"; and rewrote (a)3.

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N.J.A.C. 10:140-3.7 (2014)

§ 10:140-3.7 Procedures for requesting and granting exceptions to service standards

(a) Eligible applicants or consumers requesting exceptions shall follow the procedures listed below:

1. Requests for exceptions to N.J.A.C. 10:140-3.5(a) through (c) shall be made in writing; and
2. The written request for an exception shall be made to the Division and shall indicate the specific exception requested and provide justification.

(b) The Division shall review the request and respond to the request within 30 days.

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

In (a)1, substituted "(c)" for "(d)" and "; and" for a period at the end; in (a)2 and (b), substituted "Division" for "director of the county designated agency"; and deleted (c) and (d).

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N.J.A.C. 10:140-3.8 (2014)

§ 10:140-3.8 Transfer of services to another county

(a) Once eligibility for the Personal Assistance Services Program has been established, the consumer retains that eligibility when moving to another county within New Jersey, unless services are terminated pursuant to N.J.A.C. 10:140-3.9.

(b) In order to effect a transfer of personal assistance services, the eligible consumer shall notify the county of origin and the destination county of his or her intention to move. Notification shall be in writing or, where appropriate, verbally or through alternative communication methods. It is the consumer's responsibility to provide a recent copy of their current cash management plan.

1. Applicants or consumers who are unable to communicate in English or have a communication handicap may make arrangements with the county designated agency for an alternative means for verifying their notification of a move to another county. All other persons must provide notification of a move in writing to the director of the county designated agency.

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

Rewrote the introductory paragraph of (b); and deleted (c) through (e).

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N.J.A.C. 10:140-3.9 (2014)

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

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

(b) Voluntary suspension of service shall not exceed a total of 90 days, and shall be implemented as follows:

1. County designated agencies shall implement an initial suspension period, not to exceed 60 days, based on a request by an eligible consumer.
2. Prior to completion of the initial suspension period, the eligible consumer may request an extension, not to exceed a total of 90 days.
3. The county designated agency shall review the request for an extension and shall make a determination on whether to grant an extended suspension beyond the initial period or to terminate services. All decisions will be made on a case-by-case basis.
4. At the end of a 90-day suspension period, the county designated agency shall determine whether the consumer's services are to be resumed or terminated, and provide appropriate written notification to the consumer regarding the decision rendered.

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

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

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

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

(e) Involuntary suspensions or terminations shall be a result of non-compliance with program rules and procedures, which include, but are not limited to:

N.J.A.C. 10:140-3.9

1. Failure to submit information necessary to determine or reaffirm social and financial program eligibility in a timely fashion in accordance with N.J.A.C. 10:140-3.2 and 3.3(d);
 2. Failure to pay the appropriate consumer fee or to sign time sheets as specified in N.J.A.C. 10:140-4.3(b) and (g), respectively;
 3. Failure to comply with the training requirements specified in N.J.A.C. 10:140-6.1;
 4. Abuse or misuse of personal assistance services or personal assistants as verified by the county designated agency;
 5. Continued non-acceptance and/or dismissal of personal assistants without proper justification;
 6. Failure to meet program eligibility requirements pursuant to N.J.A.C. 10:140-2.1, unless an exception has been granted in accordance with N.J.A.C. 10:140-2.2 and 2.3;
 7. Failure of the consumer to manage personal situations which result in placing the health or welfare of a personal assistant at increased risk, as determined by the county designated agency; or
 8. Duplication of personal assistance services through other service programs or funding sources as verified by the county designated agency.
- (f) In determining whether services will be involuntarily suspended or involuntarily terminated as described in (e) above, the county designated agency shall consider the specifics of the situation, on a case-by-case basis, including, but not limited to, the following factors:
1. The severity of the situation;
 2. Any recurrences or patterns in the situation; and
 3. The effort and willingness demonstrated by the consumer to resolve the issue or to mediate the problem.

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

In the introductory paragraph of (e), substituted "rules and procedures," for "regulations and procedures".

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N.J.A.C. 10:140-3.10 (2014)

§ 10:140-3.10 Adverse agency actions

(a) An applicant or consumer may request an administrative review of an agency denial, reduction, suspension or termination of services, denial of a request for an exception, or a failure to act upon a request for services within prescribed time frames.

(b) If services received or requested are to be denied, reduced, suspended or terminated, the county designated agency shall provide written notice and, if appropriate, oral notice to the applicant or consumer at least 30 days prior to such action. Consumers may receive notice in less than 30 days in accordance with N.J.A.C. 10:140-3.9(c).

(c) The written notice of such adverse action shall indicate the reason(s) for the action to be taken, citing the basis for the decision.

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

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

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

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

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

(e) A request for a review will operate as a stay of any adverse agency action pending the outcome of the administrative review or any subsequent appeal. A stay of an adverse action may be denied either at the discretion of the county designated agency based on a case-by-case determination of severity in one of those situations described in N.J.A.C.

10:140-3.9(e)4 and 7, or because the request for a review based on a State mandated reduction in funding does not claim an incorrect computation or misapplication by the county designated agency.

(f) Once a stay of the adverse agency action is applied, personal assistance services to a consumer shall not be suspended, reduced or terminated prior to the completion of the administrative review and the rendering of the decision, except when:

1. The sole issue is one of a State mandated reduction in funding and the consumer's claim of inaccuracy or misapplication is invalid; or

2. A change in the consumer's circumstances occurs, affecting eligibility or award of services under the Program, while the decision of the administrative review is still pending and the consumer does not request an additional administrative review related to the subsequent adverse agency action.

(g) Within 30 days from the completion of the administrative review, the State Program Administrator shall render a decision and that decision shall be sent in writing to the applicant or consumer.

(h) Applicants or consumers who disagree with the decision of the administrative review may request a hearing before an Administrative Law Judge pursuant to N.J.A.C. 10:140-3.11. Instructions for such requests shall be incorporated into the written results noted in (g) above.

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N.J.A.C. 10:140-3.11 (2014)

§ 10:140-3.11 Hearings and appeals

(a) Administrative hearings under this chapter shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

1. A request for an administrative hearing shall be denied to a consumer who disputes an involuntary suspension, involuntary termination or reduction of services resulting from a State mandated reduction in funds to the county designated agency, unless the request is based on a claim of incorrect computation or misapplication by the county designated agency.

2. A consumer who has maxed out his or her eligibility for service under N.J.A.C. 10:140-2.1(a)1 or 8 shall not be eligible for a fair hearing, unless the consumer raises a challenge to a material fact.

3. In the event that an administrative hearing request is based on a claim that the level of services awarded was computed incorrectly or misapplied as a result of a State mandated reduction in funds, the consumer shall be permitted a stay of an adverse agency action pursuant to N.J.A.C. 10:140-3.10(e).

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

State Program Administrator
Personal Assistance Services Program
Division of Disability Services
PO Box 700
Trenton, New Jersey 08625-0700
1-888-285-3036

(c) In all cases, an administrative hearing must be requested within 30 days of receiving the adverse agency decision noted in N.J.A.C. 10:140-3.10.

(d) Upon receipt of a request for an administrative hearing, the Administrative Hearings Coordinator will then forward the request to the Office of Administrative Law, the State agency responsible for conducting the administrative hearings process.

(e) Upon completion of the administrative hearings process, a final decision regarding the matter in dispute shall be rendered by the director of the designated State agency.

(f) If the applicant or eligible consumer objects to the final decision made in accordance with (e) above, a notice of appeal may be filed by the applicant or eligible consumer with the Appellate Division of the Superior Court of New Jersey. Such appeals shall be made within 45 days of the date of the final decision.

(g) Further information about filing a notice of appeal may be obtained by calling or writing the:

Appellate Division of the Superior Court of New Jersey
Richard J. Hughes Justice Complex
PO Box 006
Trenton, New Jersey 08625-0006
(609) 292-4822

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

Added new (a)2; and recodified former (a)2 as (a)3.

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N.J.A.C. 10:140-3.12 (2014)

§ 10:140-3.12 Confidentiality and disclosure of information

(a) All identifiable personal information regarding applicants or consumers under this program obtained or maintained under this program shall be confidential and shall not be released without the written consent of the applicant or consumer or their authorized agent except as noted in (b) and (c) below. In the case of applicants or consumers who have AIDS or are HIV positive, release of any information shall also be subject to the provisions of N.J.S.A. 26:5C-5 et seq. and N.J.A.C. 8:61-4.1.

(b) Disclosure of information without the consent of the applicant, consumer, or his or her authorized agent shall be limited to purposes directly connected with the Program pursuant to State law and regulations. Such purposes shall include, but not be limited to, the following:

1. The determination or reaffirmation of eligibility;
2. The provision of services;
3. The determination of cost share liabilities; and/or
4. Compliance with training requirements.

(c) The prohibition of (a) above against unauthorized disclosure shall not be construed to prevent:

1. The release of statistical or summary data or information in which applicants or consumers cannot be identified;
2. The release to the Attorney General or other legal representative of this State of information or files relating to the claim of any applicant, consumer or his or her authorized agent challenging the Program's statutory or regulatory authority or a determination made pursuant thereto; or
3. The release of information or files to the State Treasurer or to his or her duly authorized representatives for an audit, review of expenditures, or similar activity authorized by law.

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N.J.A.C. 10:140-4.1 (2014)

§ 10:140-4.1 Contracting for services

(a) The consumer shall either:

1. Employ private individuals who are legally determined eligible to work as defined by the Internal Revenue Service (IRS) at I.R.C. § 31.3306(c)(2)-1(a)(2); or
2. Utilize the services of a vendor agency that can legally do business in the State of New Jersey.

HISTORY:

Repeal and New Rule, R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

Section was "Contracting for services".

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N.J.A.C. 10:140-4.2 (2014)

§ 10:140-4.2 Fees and individual budgets

(a) Fees for services under the Personal Assistance Services Program shall be based on an hourly rate determined by the consumer's cash management plan, which is established based upon the consumer's authorized plan of service hours. This number is then converted into a monthly dollar amount based on the flat rate as set forth in (b) below. Any additional costs that exceed that flat fee, shall be the financial responsibility of the county designated agency and not the Division.

(b) The reimbursement for personal assistance services shall not exceed a flat all-inclusive amount of \$ 15.00 per hour.

(c) The fee for assessments of applicants and as appropriate, eligible consumers shall be \$ 100.00 for each initial assessment authorized by the county designated agency; \$ 50.00 for annual reassessments; and \$ 25.00 for each follow-up assessment authorized by the county designated agency.

(d) The fees for personal assistance services and assessments described in (b) and (c) above shall be reviewed by the Advisory Council every two years, or as needed, and recommendations made to the Division for adjustments.

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

Section was "Provider fees". Rewrote (a), (b) and (d).

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N.J.A.C. 10:140-4.3 (2014)

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

(a) A consumer's cost share obligation for personal assistance services shall only be determined by the gross annual income of the consumer. A consumer will have the responsibility for a cost share obligation only if that consumer's individual annual gross income exceeds the applicable eligibility limit of 350 percent of the Federal Poverty Level (FPL).

1. A consumer whose annual gross income is less than 350 percent of the FPL, for his or her family size, shall not be required to pay a cost share for personal assistance services.

(b) Failure of the consumer to pay the appropriate cost share obligation within 60 days of the date of billing, without good cause, shall be grounds for termination or suspension from the Personal Assistance Services Program.

(c) The Consumer Cost Share Obligation Table (set forth in the table in (j) below) indicates income ranges and associated percentages of the total cost of the service to be paid by a consumer whose income falls within those ranges shall be applied to eligible consumers. For the purposes of assessing consumer fees under the Consumer Cost Share Obligation Table set forth in (j) below, the county designated agency shall calculate family size and the consumer's individual annual gross income pursuant to the FPL at 350 percent.

(d) Each consumer shall have a current Worker's Compensation liability policy, which covers an employee's work-related personal injury claims prior to the direct employment of a domestic household employee under the program. This policy shall be paid for by the consumer.

(e) Each consumer shall provide verification of annual gross income for determination of applicable cost share obligation fees upon application to the Personal Assistance Services Program and every 12 months thereafter. The determination of the cost share obligation fees shall be made by the county designated agency and redetermined every 12 months.

1. Acceptable verification includes, but is not limited to, pay stubs, W-2 forms or photostatic copies of the actual 1040 form filed with the Internal Revenue Service, business records, pension statements and/or correspondence from employers or agencies (for example, Social Security Administration, State employment agencies).

(f) If the costs of an eligible consumer's personal assistance services are covered in whole or in part by another State or Federal government program or insurance contract, the government program or insurance carrier shall be the primary payer and the Personal Assistance Services Program shall be the secondary payer.

(g) The consumer receiving personal assistance services and each of their employees shall sign time sheets attesting to the hours of service rendered, and the individual personal assistant or provider agency shall then be paid by a fiscal intermediary service organization. Bills verifying receipt for services rendered or items purchased shall be submitted to the fiscal intermediary service organization for payment.

(h) Upon determination of the applicable cost share obligation pursuant to the table in (j) below, the fiscal intermediary service organization shall provide the consumer with a billing of the cost share obligation to be paid by the consumer on a monthly basis.

(i) All collected consumer cost share obligations shall be retained by the fiscal intermediary service organization for the provision of personal assistance services.

(j) The table below shall be updated annually in accordance with the change in the FPL as published by the U.S. Department of Labor. The amounts of the cost share obligations will be revised annually by a notice of administrative change published in the New Jersey Register; however, any change in the "income increment" or in the applicable percentage of the cost share obligation as listed in the table below shall be promulgated through rulemaking pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

Section was "Consumer fees". Rewrote the section.

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SUBCHAPTER 4. INDIVIDUAL BUDGETS AND FEES

N.J.A.C. 10:140-4.4 (2014)

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

(a) Adjustments in consumer cost share obligation shall be based on verifiable expenses that result from the consumer's disability that are non-routine in nature and are due to unforeseen and emergent circumstances. Items that can be considered for reduction of cost share shall be limited to:

1. Unreimbursed or unreimbursable medical expenses;
2. Transportation expenses;
3. Adaptations to home or vehicle that promote access or safety and are related to the consumer's disability;
4. Expenses paid by the consumer for personal care services that are beyond the services provided by the program, but meet the definition of personal care services utilized by the program;
5. Adaptive or assistive technology to compensate for a disability;
6. Expenses related to the care of a certified service animal; or
7. Unreimbursed costs related to the repair of a mobility device or adaptive equipment.

(b) Adjustments in cost share obligations shall be re-evaluated annually or more frequently if necessary in order to redetermine the eligible consumer's ability to pay for services. Reductions in cost share shall be at the discretion of the State Program Administrator based on the list of expenses in (a)1 through 7 above. Appeals of denials of cost share reduction shall be made to the Division Director, who shall render a final decision.

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

Section was "Standards for adjustments in consumer fees". Rewrote the introductory paragraph of (a) and (a)4; in (a)3, inserted "promote access or safety and" and deleted "or" from the end; added (a)5 through (a)7; deleted former (b); recodified former (c) as (b); and in (b), substituted "cost share obligations" for "consumer fees", and inserted the last two sentences.

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N.J.A.C. 10:140-4.5 (2014)

§ 10:140-4.5 Procedures for requesting adjustments in consumer cost share obligation

(a) A consumer requesting adjustments in consumer fees shall submit a written request and justification to the county designated agency. Within 60 days following the date that the required forms for completing the adjustment are received by the consumer from the county designated agency, the consumer shall submit verification of expenses pursuant to N.J.A.C. 10:140-4.4.

(b) Upon receipt of a written request and justification for a consumer fee adjustment, the county designated agency shall review the request and submit to the State Program Administrator materials pertaining to the request along with a recommendation regarding the appropriateness of the request and the amount of the adjustment.

(c) Upon receipt of the information described in N.J.A.C. 10:140-4.5(b), the State Program Administrator shall review the request and recommendation and render a decision based on the facts presented.

(d) Upon receipt of a decision by the county designated agency from the State Program Administrator, the county designated agency shall provide the consumer with written notice regarding the disposition of the request for an adjustment in consumer fee.

(e) Adjustments in consumer fee which are approved shall be effective as of the first day of the calendar month succeeding the month in which the written request is received by the county designated agency.

(f) A consumer requesting adjustment in his or her consumer fee shall continue to pay the original percentage of the total cost of service assessed pursuant to N.J.A.C. 10:140-4.3(a), (b), (c) and (d), pending the consumer's submission of written justification and verification of expenses under N.J.A.C. 10:140-4.5(a) and (b) and approval by the State Program Administrator of the consumer's request for an adjustment under N.J.A.C. 10:140-4.5(c).

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

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

Section was "Procedures for requesting adjustments in consumer fees".

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SUBCHAPTER 5. PERSONAL ASSISTANTS

N.J.A.C. 10:140-5.1 (2014)

§ 10:140-5.1 Requirements for personal assistants/domestic household employees

(a) All persons desiring to serve as personal assistants under the Personal Assistance Services Program shall be at least 18 years of age or of age to obtain working papers.

(b) Personal assistants are considered to be domestic household employees as defined by the Internal Revenue Service at I.R.C. § 31.3306(c)(2)-1(a)(2), and shall adhere to all criteria associated with that designation.

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

Section was "Requirements for personal assistants". In the introductory paragraph of (a), substituted "or of age to obtain working papers." for "and shall meet at least one of the following requirements:"; deleted (a)1 through (a)4; re-wrote (b); and deleted (c).

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N.J.A.C. 10:140-6.1 (2014)

§ 10:140-6.1 Training requirements

(a) Newly eligible consumers under the Personal Assistance Services Program shall complete one mandatory training course entitled Orientation to Cash Model to be offered by the designated training agency, under contract with the Division. Consumers who have been previously trained may attend a refresher course as they deem it to be necessary.

1. Training will be available in lecture format and in self-paced format.

(b) All personal assistants may attend the Basic Techniques of Personal Assistance Course when offered, but only at the discretion of the consumer for whom they are employed.

(c) Training as set forth in (a) above shall be mandatory and no waivers of the requirement shall be considered.

(d) Consumer requests to receive in-home training sessions on the required training course shall be considered on a case-by-case basis.

(e) The county designated agency shall provide necessary information on consumers to the designated training agency to enable compliance with (a) above. Such information shall be furnished upon request by the designated training agency, as approved by the State Program Administrator, and shall include, but is not limited to, names, addresses and telephone numbers of consumers.

(f) The consumer shall provide or ensure the provision of necessary information on personal assistants to the designated training agency to enable compliance with (b) above. Such information shall be furnished upon request by the designated training agency, as approved by the State Program Administrator, and shall include, but is not limited to, names, addresses and telephone numbers of personal assistants, and as appropriate, written requests for a waiver of the Basic Techniques of Personal Assistance Services course.

(g) Consumers may request that the training vendor provide advanced or disability/task-specific training for their assistants, the cost of which will be the responsibility of the consumer and shall be deducted as an expense on the consumer's CMP.

(h) Newly hired staff of the county designated agency shall obtain training in the cash model within 45 days of their date of hire.

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

N.J.A.C. 10:140-6.1

Rewrote (a) through (c); in (d), inserted "the" preceding "required", and substituted "course" for "courses"; in (f), substituted "consumer" for "county designated agency" and deleted ", pursuant to N.J.A.C. 10:140-6.2(a)2 and (b)" from the end; and added (g) and (h).

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N.J.A.C. 10:140-6.2 (2014)

§ 10:140-6.2 Penalties for noncompliance with training requirements

Consumers who fail to complete the required course shall have their personal assistance services suspended and/or terminated, pursuant to N.J.A.C. 10:140-3.9.

HISTORY:

Recodified from N.J.A.C. 10:140-6.3 and amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

Rewrote the section. Former N.J.A.C. 10:140-6.2, Waivers to training requirements for personal assistants, repealed.

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N.J.A.C. 10:140-6.3 (2014)

§ 10:140-6.3 Compensation for attendance at training courses

(a) The rates of compensation for attendance at all training courses offered under the Personal Assistance Services Program shall be established by the designated State agency at a standardized rate.

(b) Personal assistants shall be issued a stipend upon completion of training referenced in N.J.A.C. 10:140-6.1(b) at the rate of \$ 10.00 per hour by the designated training agency responsible for the administration of the Statewide training program under contract with the designated State agency.

HISTORY:

Recodified from N.J.A.C. 10:140-6.4 and amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

In (b), inserted "referenced in N.J.A.C. 10:140-6.1(b)" and substituted "\$ 10.00" for "\$ 9.00". Former N.J.A.C. 10:140-6.3, Penalties for noncompliance with training requirements, recodified to N.J.A.C. 10:140-6.2.

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N.J.A.C. 10:140-6.4 (2014)

§ 10:140-6.4 (Reserved)

HISTORY:

Recodified to N.J.A.C. 10:140-6.3 by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

Section was "Compensation for attendance at training courses".

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N.J.A.C. 10:140-7.1 (2014)

§ 10:140-7.1 Requirements of fiscal intermediary service organization

(a) The fiscal intermediary service organization shall abide by all laws and regulations concerning employment of persons hired to administer or work in the Personal Assistance Services Program including, but not limited to, the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1 et seq., and the Immigration Reform and Control Act of 1986 (P.L. 99-603).

(b) At the consumer's discretion, they may choose to have the fiscal intermediary service organization conduct a background check on a perspective employee. The cost of the background check shall be reflected on the CMP and be deducted from the consumer's cash allotment.

(c) The fiscal intermediary service organization shall establish a separate accounting regarding receipt and use of cost share fees collected to ensure that cost share funds are used to expand or enhance program services in that county. These funds shall not supplant any existing allocation. This separate accounting and supporting documentation shall be made available to the designated State agency.

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

Section was "Requirements of county designated agency". In (a) and (c), substituted "The fiscal intermediary service organization" for "All county designated agencies"; rewrote (b); and deleted (d) and (e).

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N.J.A.C. 10:140-7.2 (2014)

§ 10:140-7.2 Duties of county designated agency

(a) Under the direction of the designated State agency, the county designated agency shall perform the following duties:

1. Ensure that the operation and performance of the county's personal assistance program is in compliance with law and rules as specified by the designated State agency;
2. Provide information and outreach for the Personal Assistance Services Program;
3. Complete the necessary forms to determine eligibility of applicants and provide appropriate assistance to applicants and consumers in completing all necessary forms;
4. Determine cost share amount when applicable;
5. Maintain and update individual consumer files;
6. Designate a staff person to serve as a contact person for applicants, eligible consumers and personal assistants involved in the program and document such contacts;
7. Refer applicants and eligible consumers to other agencies, programs and services for which they may be eligible and request that they make application where appropriate;
8. Maintain fiscal and program records for the program;
9. Serve as liaison to the designated State agency for the program; and
10. Coordinate activities with the designated training agency to ensure completion of mandatory training requirements for consumers and personal assistants, according to N.J.A.C. 10:140-6.1.

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

In (a)6, substituted "a" for "primary" preceding "contact"; deleted former (a)7, (a)10 and (a)12; recodified former (a)8 and (a)9 as (a)7 and (a)8, former (a)11 as (a)9 and (a)13 as (a)10; and in (a)9, substituted "program; and" for "Program;".

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N.J.A.C. 10:140-7.3 (2014)

§ 10:140-7.3 State Consumer Advisory Council on Personal Assistance Services

(a) The duties of the State Consumer Advisory Council on Personal Assistance Services shall consist of the following:

1. Serve as a resource to the Commissioner on matters pertaining to personal assistance services, and the development, implementation and evaluation of such services;
2. Advise the designated State agency on issues relevant to the development, implementation and evaluation of the Personal Assistance Services Program;
3. Evaluate the effectiveness of the Personal Assistance Services Program in meeting its objectives and share that evaluation with the Commissioner;
4. Actively explore innovative service delivery models to enhance the consumer-driven nature of the Personal Assistance Services Program; and
5. Implement (a)1 through 4 above through utilization of staff and equipment as provided by the Division of Disability Services, Department of Human Services.

(b) The State Consumer Advisory Council on Personal Assistance Services shall adhere to the following requirements regarding membership:

1. The Advisory Council shall consist of 19 members appointed by the Commissioner, at least 75 percent of whom are consumers of personal assistance services;

2. Members shall serve for a term of three years from the date of their appointment, effective on April 16, 2012, and until their successors are appointed. Vacancies in the membership shall be filled in the same manner provided for the original appointments. A member of the council shall be eligible for reappointment. The Commissioner shall appoint the council to staggered terms, which shall begin at the beginning of each fiscal year.

- i. Seven members of the Council shall serve a one-year term;
- ii. Six members of the Council shall serve a two-year term; and
- iii. Six members of the Council shall serve a three-year term;

3. The Advisory Council shall have the following county-based makeup:

i. No less than five of the members shall be residents of Central Jersey, which for the purposes of this subparagraph, shall consist of the counties of Burlington, Hunterdon, Mercer, Middlesex, Monmouth, Somerset and Warren;

ii. No less than five of the members shall be residents of North Jersey, which for the purposes of this subparagraph, shall consist of the counties of Bergen, Essex, Hudson, Morris, Passaic, Sussex and Union; and

iii. No less than five of the members shall be residents of South Jersey, which for the purposes of this subparagraph, shall consist of the counties of Atlantic, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem;

4. Three members, appointed as follows:

i. One shall be a person representing a fiscal intermediary service organization;

ii. One representing a training vendor; and

iii. One from a vendor agency that provides personal care services;

5. The Commissioner or designee shall serve as a member of the Advisory Council;

6. The Advisory Council shall organize no later than 30 days after the appointment of its members and shall select a chairperson and vice chairperson from among its members and a secretary who need not be a member of the Advisory Council; and

7. Members shall serve without compensation, but shall be reimbursed for reasonable expenses incurred in the performance of their duties.

(c) Local advisory bodies may form in the best interest of the program, but are not mandated and shall have no official duties.

HISTORY:

Amended by R.2012 d.079, effective April 16, 2012.

See: 43 N.J.R. 2551(a), 44 N.J.R. 1262(b).

Rewrote (a)5; in (b)1, substituted "19" for "21", and deleted "one from each county in New Jersey and" following "Commissioner,"; rewrote the introductory paragraph of (b)2; added (b)2i through (b)2iii; added new (b)3 through (b)5; recodified former (b)3 and (b)4 as (b)6 and (b)7; in (b)6, inserted "organize no later than 30 days after the appointment of its members and shall" and "and vice chairperson"; and added (c).

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N.J.A.C. 10:140-7.4 (2014)

§ 10:140-7.4 County designated agency disqualification

(a) A county designated agency may be disqualified from participation in Personal Assistance Service Program funding for good cause including, but not limited to, the following:

1. Failure or refusal to comply with program rules and/or contract requirements; or
2. Refusal to furnish the designated State agency with required reports, or to make available for review such files and records as required.

(b) If a county designated agency is not in compliance with program requirements pursuant to (a)1 and 2 above, as determined by the designated State agency, the following actions shall be implemented:

1. Upon a determination of noncompliance in the administration of the Program, the designated State agency shall provide a written notice to the county designated agency and require the completion of a written corrective action plan. The notice shall specify the designated State agency's reason(s) for requiring such a plan, indicate the corrective actions required to achieve compliance, and the time frames for submission;

2. The designated State agency shall review the written corrective action plan as completed by the county designated agency, and render a decision as to its appropriateness in addressing the identified noncompliance with program requirements;

3. In the event the county designated agency fails to provide an appropriate corrective action plan, or fails to implement corrective actions in accordance with an approved plan, resulting in continued noncompliance, the county designated agency shall be disqualified, unless the county designated agency demonstrates good cause as determined by the designated State agency; and

4. The designated State agency shall provide a 60-day written notice to the county designated agency if it intends to pursue disqualification. A copy of this notice shall also be sent to the State Consumer Advisory Council on Personal Assistance Services.

(c) The process of county designated agency disqualification should not result in loss or interruption of services to those eligible consumers currently receiving services.

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N.J.A.C. 10:140-7.5 (2014)

§ 10:140-7.5 Disqualification appeal process

If the designated State agency seeks to disqualify a county designated agency from participation in the Personal Assistance Services Program for failure to comply with N.J.A.C. 10:140-7.4(a)1 and 2, said county designated agency shall be afforded an opportunity to request an administrative hearing, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

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