

HUMAN SERVICES

DIVISION OF AGING SERVICES

AREA AGENCY ON AGING ADMINISTRATION

Statewide Respite Care Program

Readoption with Amendments: N.J.A.C. 10:164B

Proposed: January 17, 2017, at 49 N.J.R. 174(a).

Adopted: April 11, 2017, by Elizabeth Connolly, Acting Commissioner, Department of Human Services.

Filed: April 26, 2017, as R.2017 d.103, **without change**.

Authority: N.J.S.A. 30:4F-7 et seq., particularly 30:4F-12; and P.L. 2012, c. 17, P.L. 2014, c. 29, and P.L. 2015, c. 289.

Effective Dates: April 26, 2017, Readoption;
June 5, 2017, Amendments.

Expiration Date: April 26, 2024.

Summary of Public Comments and Agency Responses:

The Department of Human Services (Department) received comments from the Home Care & Hospice Association of NJ, Inc. (Association).

COMMENT: The Association is supportive of the amended definition of “personal care” at N.J.A.C. 10:164B-1.4.

RESPONSE: The Department thanks the Association for its support in this amendment.

COMMENT: The Association suggests the intent of proposed N.J.A.C. 10:164B-4.1(a)5 is unclear and suggests modifying the language to state that “no eligible veteran shall be

determined ineligible for the Statewide Respite Care Program based on income or liquid resources as identified in N.J.S.A. 30:4F-10.”

RESPONSE: The Department thanks the Association for the comment, but disagrees with the suggestion. The Department proposed to amend N.J.A.C. 10:164B-4.1(a)5 to address N.J.S.A. 30:4F-10. The language of the proposed amendment is very similar to the language of the statute. N.J.S.A. 30:4F-10 increases the financial limitations for certain eligible veterans, but it continues to maintain financial limitations for those veterans. Therefore, the Department will not make any changes to N.J.A.C. 10:164B-4.1(a)5.

COMMENT: The Association suggests that the Department consider including those accrediting programs acceptable for Medicaid approved agencies in N.J.A.C. 10:164B-5.2.

RESPONSE: The Department thanks the Association for the comment, but disagrees with the suggestion. The Department proposed to amend N.J.A.C. 10:164B-5.2 to address N.J.S.A. 34:8-45.1, which imposes registration and accreditation requirements upon health care service firms. Health care service firms are subject to the rules and regulations adopted by the Division of Consumer Affairs in the Department of Law and Public Safety. Since credential requirements for respite care providers is evolving, the Department has determined that the best course of action is to delete references to specific accrediting agencies for specific providers and include a general requirement that all respite care providers must comply with the requirements imposed by law. Therefore, the Department will not make any changes to N.J.A.C. 10:164B-5.2.

COMMENT: The Association comments on the use of respite services for hospice patients and whether N.J.A.C. 10:164B-6.1(d) would threaten the intermittent respite services for participants who use hospice services.

RESPONSE: The Department appreciates the Association's concerns for hospice patients and shares its concerns. Although the Department does not accept individuals receiving hospice services into the Program, the Department does not remove a participant from the Program if he or she subsequently requires hospice services. The Department will contact the Association to explain services pertaining to participants in need of hospice services. Therefore, the Department will not make any changes to N.J.A.C. 10:164B-6.1(d).

COMMENT: The Association recommends that, in N.J.A.C. 10:164B-7.1, the rates for personal care services provided under the Statewide Respite Care Program be increased to match the State's fee-for-service rate for personal care assistance per hour/weekday.

RESPONSE: The Department thanks the Association for its recommendation. The Department is actively reviewing the rates of payment for respite care services and will take the Association's recommendations under advisement for future action. However, an increase in rates is not possible at this time due to budgetary and operational concerns. Therefore, the Department will not make any changes to N.J.A.C. 10:164B-7.1.

Federal Standards Statement

The rules for the Statewide Respite Care Program (Program) establish policies and requirements for the Program. The Program is completely State-funded. Therefore, there are no Federal standards governing eligibility or services under the Program since these are established by State law.

The rules rely upon the Supplemental Security Income (SSI) guidelines under section 1611(c)(1)(A) of the Social Security Act (42 U.S.C. § 1382), as increased pursuant to section 1617 of such Act (42 U.S.C. § 1382f). Pursuant to N.J.S.A. 30:4F-12, the Department is responsible for establishing standards for eligibility for respite care services and a sliding fee schedule for co-payments. The Department uses the SSI guidelines as a basis for measuring the income of applicants for respite care services, as relevant to the determination of eligibility and co-payment amount, because the guidelines are a reliable and accepted measure to weigh applicant income against the need for financial assistance in paying for services. The Social Security Administration uses the SSI guidelines to determine eligibility and monthly benefit amount for people with limited income and resources who have a disability, who are blind or who are age 65 or older. In addition, the adopted amendments would rely upon a disability ratings determination by the United States Department of Veterans Affairs in order to determine the eligibility of an “eligible veteran” as defined in N.J.S.A. 30:4F-8.k. The United States Department of Veterans Affairs uses the disability ratings determination to establish military benefits for certain veterans. Therefore, the Department uses the SSI guidelines, and the rules readopted with amendments would use the disability ratings determination, without making any changes.

The Health Insurance Portability and Accountability Act of 1996, Pub.L. 104-191, and the regulations promulgated thereunder by the United States Secretary of Health and Human Services at 45 CFR Parts 160 and 164, known as the "Standards for Privacy of Individually Identifiable Health Information" (collectively referred to as "HIPAA"), apply to health information created or maintained by health care providers, health plans, and health care clearinghouses. The Department has determined that it is a covered entity within the meaning of

HIPAA and, therefore, must comply with HIPAA. To the extent that the Program involves protected health information subject to HIPAA, the rules readopted with amendments would meet, but not exceed, the requirements of HIPAA.

Except as described above, there are no Federal standards applicable to the subject matter of the rules readopted with amendments. Since any Federal requirements applicable to the rules are met, but not exceeded, no Federal standards analysis is required.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 10:164B.

Full text of the adopted amendments follows:

TEXT