

SUBCHAPTER 1. GENERAL PROVISIONS

6A:14-1.3 Definitions

Words and terms, unless otherwise defined below, when used in this chapter, shall be defined in the same manner as those words and terms are defined and used in the IDEA (20 U.S.C. §§ 1400 et seq.) and its implementing regulations at 34 CFR Part 300, which terms are incorporated by reference herein.

“Virtual instruction” means the same as that term is defined pursuant to N.J.A.C. 6A:32-2.1.

SUBCHAPTER 3. SERVICES

6A:14-3.9 Related services

(a) Related services, including, but not limited to, counseling, occupational therapy, physical therapy, school nurse services, recreation, social work services, medical services, and speech-language services, shall be provided to a student with a disability when required for the student to benefit from the educational program. Related services shall be provided by appropriately certified and/or licensed professionals, as specified, in the student’s IEP and according to the following:

1.-3. (No change.)

4. Occupational therapy and physical therapy may be provided by therapy assistants under the [direction] supervision of the certified and, where required, licensed therapist in accordance with all applicable State statutes and rules.

i.-ii. (No change.)

5.-12. (No change.)

(b) (No change.)

(c) Related services required by the student’s IEP may be provided through virtual instruction, as appropriate, and pursuant to the following conditions:

1. The student is confined to the home or another out-of-school setting due to a temporary or chronic health condition or a need for treatment that precludes participation in the student’s usual educational setting, pursuant to N.J.A.C. 6A:16-10.

i. To request virtual related services due to a temporary or chronic health condition, the parent shall submit to the school district a request that includes a written order from the student’s physician verifying the projected need for confinement at the student’s residence or other treatment setting for more than 10 consecutive school days or 20 cumulative school days during the school year.

ii. The school district shall forward the written determination to the school physician, who shall verify the student’s need for virtual related services. The school physician may contact the student’s physician to secure additional information concerning the student’s diagnosis or need for treatment and shall either verify the need for virtual related services or shall provide to the district board of education the reason(s) for denial.

iii. The school district shall notify the parent concerning the school physician’s verification or reason(s) for denial within five school days after the school district’s receipt of the written determination by the student’s physician.

iv. The IEP team shall meet to determine, for each related service required by the IEP, whether the related service will be provided virtually or in-person. The school district shall provide the student with virtual related services within five school days after the school district’s receipt of the school physician’s verification or, if verification is made prior to the student’s confinement, during the first week of the student’s confinement to the home or another out-of-school setting.

v. The school district shall be responsible for the costs of providing virtual related services, either directly or through a contract with another district board of education, educational services commission, jointure commission, or approved clinic or agency. The costs shall include the cost of any needed equipment.

vi. When the provision of home or out-of-school instruction exceeds 30 consecutive days in a school year, the IEP team shall

convene a meeting to review the continued need for virtual related services and, if appropriate, revise the student’s IEP.

2. A school building or school district is closed pursuant to N.J.S.A. 18A:7F-9.b or c and the school district has implemented its program of virtual or remote instruction pursuant to N.J.A.C. 6A:32-13; or

3. The appropriate local health agency or officer or the student’s physician determines that the student requires a mandatory period of isolation/quarantine for at least five days because the student’s presence in school may jeopardize the health of others because the student has contracted a communicable disease or has been exposed to a communicable disease.

i. The IEP team shall meet to determine, for each related service required by the IEP, whether the related service will be provided virtually or in-person.

SUBCHAPTER 5. PROVIDING EDUCATIONAL AND RELATED SERVICES

6A:14-5.1 General requirements

(a)-(b) (No change.)

(c) For the services listed below, district boards of education may contract with private clinics and agencies approved by the Department of Education, private professional practitioners who are certified and licensed according to State statutes and rules, and agencies or programs that are certified, approved, or licensed by the Department of Human Services or by the Department of Health to provide counseling or mental health services. For the related services listed at (c)1iii and v below, approved private schools for students with disabilities may contract with private clinics and agencies approved by the Department of Education, private professional practitioners who are certified and licensed according to State statutes and rules, and agencies or programs that are certified, approved, or licensed by the Department of Human Services or by the Department of Health to provide counseling or mental health services. All instructional, child study team, and related services personnel provided by approved clinics and agencies and private professional practitioners shall be fully certified. No instructional, child study team, and related services personnel provided by approved clinics and agencies, or private professional practitioners, may, if a certification is required for the discipline [under] pursuant to which they are providing services, provide services [under] pursuant to this subsection if certified through the emergency certification process.

1. For public school students:

i.-ii. (No change.)

iii. Related services;

(1) (No change.)

(2) Physical therapy assistants shall work [in the presence and] under the supervision of a certified physical therapist.

(3) (No change.)

iv.-v. (No change.)

2. (No change.)

(d)-(e) (No change.)

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Contribution to Care and Maintenance Requirements

Proposed Readoption with Amendments: N.J.A.C. 10:46D

Authorized By: Sarah Adelman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1-12 et seq., 30:4-60 et seq., and 30:6D-5.

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

Proposal Number: PRN 2023-107.

Submit written comments by January 5, 2024, electronically to DDD-CO.LAPO@dhs.nj.gov, or by regular mail or facsimile to:

Carol Jones
Administrative Practice Officer
Division of Developmental Disabilities
PO Box 726
Trenton, NJ 08625-0726
Fax: (609) 341-2451

The agency proposal follows:

Summary

The Department of Human Services (Department) proposes to readopt N.J.A.C. 10:46D, Contribution to Care and Maintenance Requirements, with amendments. Chapter 46D establishes guidelines and criteria for determining the financial ability of individuals served by the Division of Developmental Disabilities (“Division” or “DDD”) and that of their legally responsible relatives to contribute to the cost of care and maintenance when the individual receives residential services from the Division.

The Department adopted N.J.A.C. 10:46D, Contribution to Care and Maintenance Requirements, as new rules, effective December 15, 2003. The Division readopted the chapter in 2009 and 2016. The chapter was scheduled to expire on October 25, 2023; however, pursuant to N.J.S.A. 52:14B-5.1.c(2), the expiration date is extended 180 days to April 22, 2024. N.J.S.A. 30:4-60 requires the Department to determine if a person receiving residential services from the Division, or his or her legally responsible relatives, possesses sufficient income, assets, resources, or estate to pay for, or make payment towards, his or her maintenance.

The Division has reviewed this chapter, and has found that, with the proposed amendments, the rules are reasonable, necessary, and proper for the purpose for which they were originally promulgated.

The Department is providing a 60-day comment period on this notice of proposal. Therefore, 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.

Subchapter 1. General Provisions

N.J.A.C. 10:46D-1.1 sets forth the purpose of the chapter to establish guidelines and criteria for determining the financial ability of individuals, or their legally responsible relatives, to contribute to the cost of care and maintenance when the individual receives residential services from the Division. The Division is proposing technical amendments to this section to update the term Community Care “Waiver” to Community Care “Program,” which is the name of the Medicaid program through which services are now provided in licensed residential settings.

N.J.A.C. 10:46D-1.2 sets forth the scope of the chapter. The Division proposes to add language to reflect that the provisions of this chapter do not apply to individuals whose services are funded through Medicaid fee-for-service in which the State receives a Federal match. This proposed language clarifies the existing practice. As these individuals’ services are not funded through a contract with the Division, they do not pay contribution to care to the Division. Rather, they pay a portion of their gross monthly income directly to the residential provider for rent, plus an additional amount for other costs as determined by the terms of the service agreement between the individual and the residential provider. The Division is also proposing to update Community Care “Waiver” to Community Care “Program.”

N.J.A.C. 10:46D-1.3 provides the definitions for the terms used in the chapter. The Division added a definition for the term “‘Division’ or ‘DDD’” to clarify all references to the Division of Developmental Disabilities. The Division added language to the definition of “cost of care and maintenance” that will clarify that cost of care and maintenance requirements apply to individuals served by the Division who are receiving residential-based services. This corrects an oversight made when the rules were last promulgated in 2016. The Division is also proposing to update Community Care “Waiver” to Community Care “Program.” Finally, the Division proposes to correct a typographical error in the statutory citation within the definition of “assets or resources.”

Subchapter 2. Financial Criteria

N.J.A.C. 10:46D-2.1 sets forth the general standards applicable to assessing contribution to care and maintenance. The Division is proposing a technical change to this section to update Community Care “Waiver” to Community Care “Program.” The Division is also proposing to replace a reference to “regional office” with the term “Division” to reflect that the Division is no longer structured into regional offices.

N.J.A.C. 10:46D-2.2 contains guidelines for determining the financial ability to contribute. The Division is proposing to update the term Community Care “Waiver” to Community Care “Program.”

Subchapter 3. Treasury Formula - DDD

N.J.A.C. 10:46D-3.1 sets forth the formula to calculate contribution to care and maintenance for individuals over 18 years of age. The Division is proposing to update Community Care “Waiver” to Community Care “Program.” The Division is also proposing to clarify that in the calculation of the Treasury formula for contribution to care, minimum wage is determined by the state in which an individual works.

N.J.A.C. 10:46D-3.2 sets forth the formula to calculate contribution to care and maintenance for individuals under 18 years of age.

N.J.A.C. 10:46D-3.3 sets forth the formula to calculate the contribution to care and maintenance for married persons over the age of 18 years.

Subchapter 4. Provider Responsibilities

N.J.A.C. 10:46D-4.1 permits the Division to designate an agency licensed pursuant to N.J.A.C. 10:44A, who is providing services to the individual, to collect contribution to care and maintenance.

Subchapter 5. Termination

N.J.A.C. 10:46D-5.1 sets forth interim steps and notice requirements before the Division may terminate an individual’s services due to nonpayment of contribution to care and maintenance. The Division is proposing to amend the time required for compliance from 60 days to 90 days to reflect a statutory change at N.J.S.A. 30:4-25.9. The Division also proposes to correct a typographical error for a cross-reference in the subchapter.

Subchapter 6. Appeals Process

N.J.A.C. 10:46D-6.1 sets forth the requirements and process for appeals concerning contribution to care and maintenance. The Division proposes to correct a typographical error for a cross-reference in the subchapter.

Social Impact

The rules proposed for readoption with amendments will have a positive social impact because they implement statutory law requiring individuals and their legally responsible relatives to contribute to the cost of care and maintenance based upon their financial ability to pay.

Economic Impact

The Division is not proposing any amendments to the manner in which contribution to care and maintenance is calculated. The Division is proposing amendments to reflect the transition from a contract reimbursement system to Medicaid fee-for-service, as individuals being funded through fee-for-service do not contribute to the Division for the cost of their care. Therefore, while the rules proposed for readoption with amendments reflect current operational procedures, they will have minimal economic impact on the State budget. There will be a continuing economic impact on those individuals required to contribute to their care by statute and regulation. This impact is appropriate as the contribution is calculated according to the ability to pay and is used to offset the cost of care and maintenance.

Federal Standards Statement

The rules proposed for readoption with amendments apply to State funding, and not Medicaid funding. No Federal requirements or standards apply to the reimbursement pursuant to the contribution to care and maintenance as part of this rulemaking. Therefore, a Federal standards analysis is not required.

Jobs Impact

The rules proposed for readoption with amendments will neither generate nor cause a loss of jobs.

Agriculture Impact Statement

The rules proposed for readoption with amendments will not have an impact on agriculture in the State of New Jersey.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments govern the payment of contribution to care to the Division for individuals receiving residential services funded by the Division, and do not impose reporting, recordkeeping, or other compliance requirements upon small businesses, as defined pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. While the rules allow provider agencies who operate licensed residential settings, some of whom may be small businesses, to choose to collect the payments, provider agencies are not generally involved in the process governed by the rules, particularly following the transition from funding through contract reimbursement to Medicaid fee-for-service.

Housing Affordability Impact Analysis

There is an extreme unlikelihood that the rules proposed for readoption with amendments will have an impact on the affordability of housing in New Jersey or evoke a change in the average costs associated with housing because the rules concern contribution to care and maintenance for individuals receiving services from the Division.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments concern the contribution to care and maintenance for individuals served by the Division. Therefore, there is an extreme unlikelihood that the rules will evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan.

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. 10:46D.

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

SUBCHAPTER 1. GENERAL PROVISIONS

10:46D-1.1 Purpose; authority

(a) Pursuant to N.J.S.A. 30:6D-1 (P.L. 1995, c. 155), the Division of Developmental Disabilities, Department of Human Services[,] (Division) has established guidelines and criteria for determining the financial ability of persons served and that of their legally responsible relatives to contribute to the cost of care and maintenance when the individual receives residential services from the Division. The individual is also required to apply for all benefits, primarily the Medicaid DDD Community Care [Waiver] **Program**, for which they are eligible and comply with the requirements of this program prior to residential placement by the Division. He or she is also required to maintain eligibility for these benefits in compliance with the requirements of this chapter.

(b) The individual is responsible to maintain those benefits. Generally, to remain eligible, the individual cannot have more than \$2,000 in cash assets that are not excludable as a resource. The Division's Community Care [Waiver] **Program** is a Medicaid program, which provides Federal financial participation for services. It is, therefore, necessary for individuals to apply for the Medicaid DDD Community Care [Waiver] **Program** prior to the receipt of these services, to maximize Federal funds for program expansion for individuals not yet being offered services.

10:46D-1.2 Scope

(a) The provisions of this chapter shall apply to all individuals before they are provided residential services from the Division, **with the exception of those individuals whose services are funded through Medicaid fee-for-service in which the State receives a Federal match.**

Individuals residing in residential settings whose services are funded through Medicaid fee-for-service in which the State receives a Federal match do not pay contribution to care to the Division. [The individual is] **All individuals, including those whose services are funded through Medicaid fee-for service** are responsible to [make application] **apply** for the Medicaid DDD Community Care [Waiver] **Program** and all other benefits for which they are entitled[, and]. **Individuals for whom the provisions of this chapter apply are required** to submit financial information to determine their ability to contribute toward the cost of [that] **their** placement.

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

10:46D-1.3 Definitions

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

“Assets” or “resources” means, but is not limited to, cash, trusts, bank accounts, certificates of deposit, stocks, bonds, mutual funds, real estate and savings bonds, and personal property pursuant to N.J.S.A. 30:4-25.1a[(8)].

...
 “Benefits” means all current and future sources of cash and health assistance from Federal, State, or private entities, including, but not limited to, Medicare, Medicaid, the Medicaid DDD Community Care [Waiver] **Program**, State and Federal funds, and any third party support pursuant to statute, rule, order, or by contract.

...
 “Cost of care and maintenance” means the daily rate set by the Commissioner of the Department of Human Services for **the residential placement of individuals and** community care homes (except respite homes) regulated [under] **pursuant to** N.J.A.C. 10:44B, multiplied by the number of days the individual is, or was, in the placement.

...
 “Division” or “DDD” means the **Division of Developmental Disabilities and its staff.**

...
 “Medicaid DDD Community Care [Waiver] **Program**” means the Community Care [Waiver] **Program**, which is a Medicaid program that allows the State to waive certain Federal Medicaid eligibility criteria for individuals who meet eligibility for Division of Developmental Disabilities services and require an ICF/IID level of care.

SUBCHAPTER 2. FINANCIAL CRITERIA

10:46D-2.1 General standards

(a) The individual or his or her legally responsible relative shall be responsible to apply for the Medicaid DDD Community Care [Waiver] **Program** and to maintain eligibility for these benefits. The individual, or his or her legally responsible relative, shall also submit complete financial information necessary to assess contribution to care prior to placement or the delivery of services by the Division.

(b) The individual, or his or her legally responsible relative, shall be responsible to comply with all requirements to maintain continued eligibility for the Medicaid DDD Community Care [Waiver] **Program** benefits during the time services are provided by the Division.

(c) At the time of an offer of placement, the individual, legal guardian, and/or his or her LRR(s) shall be advised, in writing, by Division staff that it will be necessary to apply for the Medicaid DDD Community Care [Waiver] **Program** and all other benefits and to submit financial information in order for the Division to determine the ability of the individual and/or LRR(s) to contribute to the cost of care.

(d)-(i) (No change.)

(j) Should an individual be residentially placed by the Division on an emergency basis, the information required for a financial determination is due [at the regional office for the area in which the placement is located] **to the Division** no more than 28 days following the date of placement. If the information is not provided within the required time frames, the Division may consider the individual's circumstances on a case-by-case basis. Failure to provide the required documentation may result in the Department seeking any of the remedies set forth [in] **at** N.J.A.C. [10:46-] **10:46D-5.1.**

(k) (No change.)

10:46D-2.2 Determination of financial ability to pay

(a) The individual, or his or her legally responsible relative, shall be required to apply for the Medicaid DDD Community Care [Waiver] **Program** and all other benefits and to provide financial information, including, but not limited to, assets, resources, income, or insurance. The individual, or his or her legally responsible relative, shall comply with all requirements of the Medicaid DDD Community Care [Waiver] **Program** and N.J.A.C. 10:46D-1.1 to maintain eligibility for benefits.

(b)-(j) (No change.)

SUBCHAPTER 3. TREASURY FORMULA-DDD

10:46D-3.1 DDD Formula A-DDD(A) for persons over age 18

(a)-(b) (No change.)

(c) The individual, or his or her representative payee, is responsible to keep his or her accumulated funds under \$2,000 to ensure continued eligibility for the Medicaid DDD Community Care [Waiver] **Program** benefits.

(d)-(g) (No change.)

(h) All earnings from employment below minimum wage shall be exempt from determining an individual’s available income and shall not be considered part of the individual’s disposable income. **Minimum wage is determined by the state in which an individual works.** Contributions to the cost of care and maintenance from employment earnings at or above minimum wage shall be computed similar to the way in which the Social Security Administration counts earned income for Supplemental Security Income purposes. Contributions shall be determined, as follows:

1.-4. (No change.)

(i) The individual, or his or her representative payee, may utilize the funds from earned income, as he or she determines appropriate, however, he or she is responsible to maintain continued eligibility for the Medicaid DDD Community Care [Waiver] **Program** benefits.

SUBCHAPTER 5. TERMINATION

10:46D-5.1 Notice of termination

(a) While N.J.S.A. 30:4-25.9 provides the Division with the ability to terminate any services to the eligible individual within [60] **90** days if the conditions of eligibility are not complied with, when the assessed contribution to the cost of care and maintenance is not received in a timely fashion, in all instances the Division will take a number of interim steps prior to initiating such final action, as delineated in this section.

(b)-(e) (No change.)

(f) Should the individual and/or LRR(s) request a revision of the amount to be paid or notify the Division of an inability to pay in accordance with N.J.A.C. 10:46D-2.2[(l)](i), the Division shall investigate the circumstances.

1.-2. (No change.)

(g)-(k) (No change.)

SUBCHAPTER 6. APPEALS PROCESS

10:46D-6.1 Appeals

(a) (No change.)

(b) Any change to unearned income or income from wages shall not be a basis for an appeal. Changes to income shall be addressed according to N.J.A.C. 10:46D-2.2[(h)](i).

(c)-(i) (No change.)

TRANSPORTATION

(a)

MOTOR VEHICLE COMMISSION

Zone of Rate Freedom

Proposed Amendment: N.J.A.C. 16:53D-1.1

Authorized By: Latrecia Littles-Floyd, Acting Chair and Chief Administrator, Motor Vehicle Commission.

Authority: N.J.S.A. 39:2-3, 39:2A-21, 39:2A-28, 48:4-2.21, and 48:4-2.25.

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

Proposal Number: PRN 2023-103.

Submit written comments by January 5, 2024, to:

Emily Armstrong, APO
Attn: Legal Affairs
Motor Vehicle Commission
225 East State Street
PO Box 162
Trenton, NJ 08666-0162
or through email to: MVC.rulecomments@mvc.nj.gov

The agency proposal follows:

Summary

The Motor Vehicle Commission (Commission) proposes to amend the provisions at N.J.A.C. 16:53D, Zone of Rate Freedom, to fulfill its statutory responsibility to establish an annual Zone of Rate Freedom (ZORF) for regular route private autobus carriers providing service within the State, pursuant to N.J.S.A. 48:4-2.21. The ZORF is the maximum permitted percentage increase adjustment and the maximum permitted percentage decrease adjustment that a private autobus carrier may make to its rate, fare, or charge for intrastate regular route service without first having to petition the Commission for approval. If the autobus carrier’s fare adjustments remain within the designated ZORF percentage range, the carrier need only give notice to the Commission and the bus-riding public of the rate, fare, or charge adjustment. However, should a regular route private autobus carrier seek a percentage fare adjustment other than that allowed by the ZORF, the carrier will be required to file a petition with the Commission and comply with the notice procedures set forth at N.J.A.C. 16:51-3.10 and 3.11. In proposing the ZORF for calendar year 2024, the Commission took into account several factors relevant to changes in the average costs of operating bus services, fares charged by public transportation, and the interests of the public who use private regular route bus services.

In assessing the effect of changes in the average costs of operating bus services, the Commission examined the average costs incurred by private autobus carriers in the past year for diesel fuel, commercial automobile insurance, health care, and labor. The Commission obtained data from the American Automobile Association, the New Jersey Department of Banking and Insurance, the New Jersey Department of Labor and Workforce Development, and the United States Social Security Administration. According to the historical data available, the average price per gallon of diesel fuel has decreased by approximately 25 percent since 2022. Rates for commercial auto insurance policies providing coverage to commercial vehicles, including autobuses, increased in New Jersey, on average, by approximately 20 percent within the last year. The average salary for bus drivers in New Jersey, including those employed by private autobus carriers, has increased on average by approximately four percent since 2022. The national average in the cost-of-living reflects an increase in general costs over the last year, with the most recent increase of almost nine percent taking place in 2023. Health care costs represent an important area of concern for autobus companies, impacting both small and large employers, as costs have increased by approximately 20 percent since 2022.

In addition to changes in the average costs of operating private regular route bus services, the Commission reviewed the history of fare increases implemented by New Jersey Transit and the potential effect of fare