OFFICE OF ADMINISTRATIVE LAW
Rules for Agency Rulemaking
Use of Electronic Technologies in Rulemaking

Proposed Amendments: N.J.A.C. 1:30-1.2, 1.9, 3.4, 4, 5, 6.1, 6.3, 6.4, and 6.5

Proposed New Rule: N.J.A.C. 1:30-2.10


Proposed N.J.A.C. 1:30-2.10

The OAL checks the functionality and currency of this website on a bi-weekly basis.

N.J.A.C. 1:30-2.10 is proposed to set forth the agency’s rulemaking and public hearing notices, publicity documents, press releases, final and non-confidential agency reports, and rulemaking petitions received by the agency; and a complete list of the agency’s permits, fees, violations, penalties, deadlines, processing times, and appeals procedures.

The Office of Administrative Law (OAL) proposes amendments to the Rules for Agency Rulemaking, N.J.A.C. 1:30, along with a new rule to incorporate the amendments to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., enacted by P.L. 2013, c. 259 (the Act). The Act’s amendments require State agencies to:

• Post on their Internet websites, or provide links to, their rules and each State law under which they are granted their authority;
• Publish on their Internet websites all final agency orders, decisions, and opinions; all of the agency’s rulemaking and public hearing notices, publicity documents, press releases, final and non-confidential agency reports, and rulemaking petitions received by the agency; and a complete list of the agency’s permits, fees, violations, penalties, deadlines, processing times, and appeals procedures;
• Provide for the submission of comments on rulemaking proposals and pre-proposals through e-mail or electronic mailing lists;
• Create an electronic mailing list to which website visitors may subscribe; and
• Distribute notices of proposed rulemakings and notices of pre-proposal to the electronic mailing list described above.

To implement these requirements, the OAL proposes amendments and a new rule, as follows:

N.J.A.C. 1:30-1.2, the chapter definitions section, is proposed for amendment to add the Act’s definitions of “electronic mailing list” and “URL address.”

New rule N.J.A.C. 1:30-2.10 is proposed to set forth the agency’s rulemaking and public hearing notices, publicity documents, press releases, final and non-confidential agency reports, and rulemaking petitions received by the agency; and a complete list of the agency’s permits, fees, violations, penalties, deadlines, processing times, and appeals procedures.

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The Act changed the above-quoted language in N.J.S.A. 52:14B-4(a)(1) to: “Each agency shall additionally publicize the intended action and shall adopt rules to prescribe the manner in which it will do so. In order to inform those persons most likely to be affected by or interested in the intended action, each agency shall distribute notice of its intended action to interested persons, and shall publicize the same, through the use of an electronic mailing list or similar type of subscription-based e-mail service.” This change encompasses the concept of notice to a distribution list compiled by an agency, and adds notice to an electronic mailing list created by members of the public. The two new required methods of publicity are included at new N.J.A.C. 1:30-5.2(a)3i and iii. As the two new methods together appear to be an enhancement of the “[m]ailing to a distribution list” method of additional publicity an agency may use under N.J.A.C. 1:30-5.2(a)6ii(5), that sub-subparagraph is proposed for deletion. In addition, as the statutory phrase “to inform those persons most likely to be affected by or interested in the intended action” was changed from a statement of purpose for the additional proposal publicity required of an agency, the manner of which it was required to rulemake, to a statement of purpose for two added types of required publicity, the language is proposed to be deleted at N.J.A.C. 1:30-5.2(a)6 and (a)6ii(6).

N.J.S.A. 52:14B-4(a)(1) sets forth several additional publicity methods an agency may employ for a proposed rulemaking, which methods are included at N.J.A.C. 1:30-5.2(a)6ii(1) through (4). The Act amends the method “posting of notices in appropriate locations” by adding, “including the agency’s Internet website.” As previously discussed, the Act requires an agency to publish a notice of proposal on its Internet website, the fulfillment of which requirement by an agency would also satisfy the additional publicity requirement as amended. In providing for the mandatory Internet publication of a notice of proposal to also satisfy the requirement for additional publicity, this amendment seems contrary to the apparent purpose of many of the Act’s other amendments to increase public awareness of and access to State agency rulemakings. In order to give workable effect to this allowance of Internet posting in the context of the broad public notice requirements of N.J.S.A. 52:14B-4(a)(1), the OAL proposes new N.J.A.C. 1:30-5.2(a)6ii(4)(A), which provides if an agency’s rule on its method of additional publicity promulgated pursuant to N.J.A.C. 1:30-5.2(a)6 provides that the agency’s method shall be posting of notice on its Internet website, the publication of a notice of proposal from the agency’s Internet website pursuant to N.J.A.C. 1:30-5.2(a)3 shall satisfy the additional publicity requirements of N.J.A.C. 1:30-5.2(a)6 for that notice of proposal.

The Act’s amendments to N.J.S.A. 52:14B-4(e) concerning notices of proposed action are incorporated in the promulgation of N.J.A.C. 1:30-5.3. Proposed N.J.A.C. 1:30-5.3(d) provides that an agency shall afford all interested persons a reasonable opportunity to submit data, views, comments, or arguments, orally or in writing, on the proposed action, and shall fully consider all written and oral submissions, including any written submissions received by the agency through its e-mail systems or, if designed to receive messages, electronic mailing lists. The design language concerning the electronic mailing list, while not appearing in the Act, is included for the reason discussed above concerning proposed new N.J.A.C. 1:30-5.1(b)9iv. Proposed new N.J.A.C. 1:30-5.3(e) provides that an agency shall distribute a notice of pre-proposal to interested persons through the use of an electronic mailing list or similar type of subscription-based e-mail service, and make the notice available for public viewing through publication on the agency’s Internet website, no later than the date of publication of the notice in the New Jersey Register.

N.J.A.C. 1:30-5.3(d) requires agencies to accept all public comments postmarked within the designated comment period in a notice of proposal or pre-proposal, or as thereafter extended. To accommodate comments submitted by e-mail or through an electronic mailing list, the subsection is proposed for amendment to require the acceptance of e-mail comments bearing an e-mail sent date, and comments submitted through an...
Proposed N.J.A.C. 1:30-6.1(b)10. The proposed amendment to N.J.A.C. 1:30-1.9, Copies of documents; fees, is proposed for amendment to subsection (a) to replace per page fees for copies of filed documents from the OAL’s Division of Administrative Rules that are out-of-date under N.J.S.A. 47:1A-5.b with a reference to that statutory provision as the basis for obtaining such copies from the Division. N.J.S.A. 47:1A-5.b currently provides paper copying charges of $0.05 per letter size page or smaller and $0.07 per legal size page or larger; special provisions for situations in which actual costs of providing copies exceed those rates; and free access to electronic records and non-printed materials. In keeping with this amendment, proposed N.J.A.C. 1:30-3.4(c) is proposed for amendment to delete reference to the copying fee schedule at N.J.A.C. 1:30-1.9(a).

N.J.A.C. 1:30-5.1(b)iii requires an agency to include in the information on the public’s opportunity to be heard in a notice of proposal, the name, address, and telephone number of the person(s) to receive written comments or oral comments. As a telephone number would only be necessary in a situation in which an agency has opted to permit the submission of oral comments by telephone, the subparagraph is proposed for amendment to so reflect. In addition, the subparagraph is proposed for amendment to provide that the name and address to be included is that of the person to receive postally-mailed written comments. As discussed above, proposed N.J.A.C. 1:30-5.1(b)iv requires an agency to include in a notice of proposal an address for the submission of comments through the agency’s e-mail system or, if designed to receive messages, electronic mailing list.

The proposed amendment to N.J.A.C. 1:30-5.1(d) deletes the requirement for a notice of proposal to include the full text of a proposed repeal or readoption. In the great majority of cases, a notice of proposal refers the reader to the New Jersey Administrative Code for the full text of the rule proposed for repeal or the chapter proposed for readoption. In addition, the subsection is proposed for amendment to require the notice of proposal to include the full text of the proposed new rule or amendment, specifically indicating any additions and/or deletions. This amendment deleting “of any rule text being repealed or recodified” after “any additions and/or deletions” conforms the rule text to the long-standing format of a notice of proposal.

New Jersey Register, Monday, November 17, 2014 (CITE 46 N.J.R. 2223)
N.J.A.C. 1:30-5.2 sets forth the requirements for publication and distribution of a notice of proposal. N.J.A.C. 1:30-5.2(a) introduces the actions set forth in paragraphs (a)1 through 6 that the OAL and the agency submitting the notice of proposal are to take in regards to the notice by way of the publication of the notice and distribution of the notice or a statement of the substance of the proposed action, and begins with the phrase “[u]pon OAL’s receipt of a notice of proposal.” As the actions under paragraphs (a)2 through 6 occur after, rather than upon, the OAL’s receipt of the notice, the phrase is proposed for amendment as “[a]fter the OAL’s receipt of a notice of proposal.” In keeping with this clarifying amendment, N.J.A.C. 1:30-5.2(a) is proposed for amendment to provide that the OAL shall submit the notice of proposal to the Senate and General Assembly within two business days “of receipt” of the notice. In addition, the paragraph’s exception to this requirement for a notice of a Federally required rule, referencing N.J.A.C. 1:30-3.7, is proposed for deletion. N.J.S.A. 52:14B-4.4, which defined a Federally required rule and exempted a notice of proposal of such a rule from submission to the Legislature by the OAL, was repealed in 2001, and N.J.A.C. 1:30-3.7, recodified as N.J.A.C. 1:30-5.8, which incorporated that definition and exemption, was subsequently repealed.

At N.J.A.C. 1:30-6.1(a), the OAL proposes to delete a superfluous “(a)” introduced into the rule text during the publication of a 2001 rulemaking.

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

Social Impact

The OAL anticipates a positive social impact from the proposed amendments and new rule. The new additional notice requirements for notices of proposal and pre-proposal may increase public awareness of State agency rulemakings. Along with the submission of public comments on proposals and pre-proposals by e-mail and through electronic mailing lists, these requirements could result in broader public input in the rulemaking process, with the potential for improvement of agency rules. The extensive requirements for Internet website publication of, or linking to, State agency laws and rules, and Internet website publication of State agency rulemaking notices; final orders, decisions, and opinions; and public hearing notices, publicity documents, press releases, permits, fees, violations, penalties, etc., would facilitate access by the public and all levels of government to, and possibly enhance understanding of, the bases for and processes of State agency action. The petition for rulemaking process is made easier for petitioners by the expansion of the methods for submission of a petition.

Economic Impact

As reflective of the Act’s requirements, the proposed amendments and new rule will have their most significant economic impact on State agencies. State agencies will have to adjust their internal rulemaking processes to accommodate the additional requirements for pre-proposal notices, the rulemaking notice Internet website publication requirements, and the new rulemaking petition and proposal comment submission methods. In addition, State agencies may have to alter the structure and features of their Internet websites to accommodate the electronic mailing list subscription sign-up; the publication of, or linking to, the agency’s laws and rules; and the publication of the agency’s rulemaking notices; final orders, decisions, and opinions; and public hearing notices, publicity documents, press releases, permits, fees, violations, penalties, etc. These alterations to State agency Internet websites will require the allocation of staff resources, particularly in the information technology area, and may also require the assistance of the Office of Information Technology in the Department of the Treasury. State agencies will also have to adjust responsibilities of certain staff in order to ensure the continual updating of the documents and information required to be published on their Internet websites.

The required publication of information and documents on the agencies’ Internet websites should economically benefit the public in terms of the time and cost savings in not having to travel to obtain the information and view, or obtain copies of, the documents, or to go through a remote ordering process to obtain copies of the documents. Copying charges for paper copies of these documents that were not previously in electronic form need not be incurred once the documents are published on an agency’s Internet website. Members of the public seeking to comment on notices of proposal could do so electronically and not have to pay postage. The proposed amendment to N.J.A.C. 1:30-1.9 replacing outdated per page charges for copies of filed documents from the OAL’s Division of Administrative Rules with a reference to the statute setting forth the current applicable charges will not have an economic impact, as the lower statutory charges already apply.

Federal Standards Statement

A Federal standards analysis is not required because proposed amendments and new rule are promulgated to implement rulemaking requirements of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and are not subject to any Federal standards or requirements.

Jobs Impact

The proposed amendments and new rule will not generate or cause the loss of any jobs.

Agriculture Industry Impact

The proposed amendments and new rule will not have any impact specific to the agriculture industry. Businesses within that industry may benefit as members of the public as discussed under the Social Impact and Economic Impact above.

Regulatory Flexibility Statement

The proposed amendments and new rule do not impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The requirements in the amendments and new rule are imposed on State agencies.

Housing Affordability Impact Analysis

The proposed amendments and new rule will have no impact on housing affordability, as the amendments and new rule concern the State agency rulemaking process and requirements for State agencies to publish their laws, rules, and specified other documents and information on their Internet websites.

Smart Growth Development Impact Analysis

The proposed amendments and new rule will have no impact on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan, as the amendments and new rule concern the State agency rulemaking process and requirements for State agencies to publish their laws, rules, and specified other documents and information on their Internet websites.

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“URL address” means a Uniform Resource Locator address, which is used for the purposes of Internet navigation and is commonly referred to as a website link, and which uses a protocol, such as “http”, and a domain name to identify, and provide website visitors with direct access to, a particular Internet file or website page.

1:30-1.9 Copies of documents; fees
(a) Any person may obtain copies of filed documents from the Division of Administrative Rules pursuant to the provisions of N.J.S.A. 47:1A-2, 3.b. (upon payment of a fee as follows:
1. First page to 10th page: $ .75 per page;
2. Eleventh page to 20th page: $ .50 per page;
3. All pages over 20: $ .25 per page.)
(b) (No change.)

SUBCHAPTER 2. RULEMAKING GENERALLY
1:30-2.10 Agency Internet website posting required
(a) Notwithstanding any law, rule, or regulation to the contrary, each agency shall post, in a visible and publicly-accessible location on the agency’s Internet website:
1. The complete and current text of each State law under which the agency is granted its authority, and the complete and current text of each rule that has been adopted by the agency, or that is proposed for, or is pending, agency adoption; or
2. One or more URL addresses, which provide visitors to the agency’s website with a direct link to the complete and current text of the documents listed in (a) above.
(b) An agency shall make regular and timely updates to the full text documents and/or URL addresses posted on its Internet website pursuant to (a) above, and shall take any other reasonable action necessary to ensure that the posted documents and/or URL addresses accurately reflect, or are directly linked to, as the case may be, the most recent version of the associated law or rule, including any amendments or supplements thereto, or repeals thereof. The agency shall indicate on its Internet website, the frequency with which updates are made pursuant to this subsection.
(c) An agency that posts one or more URL addresses on its Internet website pursuant to (a) above shall additionally verify, on a regular basis, the functionality of each URL address and provide a means by which website visitors can notify the agency, through e-mail communication, and through any other reasonable means, of any nonfunctional URL address.
(d) In addition to the requirements in (a) above, each agency shall make the following available for public viewing, through publication on the agency’s Internet website and, as to (d)1 below, through any other means:
1. All final agency orders, decisions, and opinions, in accordance with N.J.S.A. 47:1A-1 et seq.;
2. All of the agency’s rulemaking and public hearing notices, publicity documents, press releases, final and non-confidential agency reports, and rulemaking petitions received by the agency; and
3. A complete list of the agency’s permits, fees, violations, penalties, deadlines, processing times, and appeals procedures.

SUBCHAPTER 3. RULEMAKING CALENDARS
1:30-3.4 Calendar copies
(a) Each agency shall include, in that portion of its Internet [web site] website concerned with rulemaking, [either] its rulemaking calendar [or] and a notice of the availability of its rulemaking calendar for the fee established at (c) below. If an agency’s [web site] Internet website does not feature a portion devoted to rulemaking, the calendar or notice of the availability of the rulemaking calendar shall be included in that portion of the [web site] website otherwise used for public notices and/or information.
(b) (No change.)
(c) Agencies shall charge a fee for copies of their rulemaking calendars in accordance with [the copying fee schedule at] N.J.A.C. 1:30-1.9(a).

SUBCHAPTER 4. PETITION FOR RULEMAKING
1:30-4.1 Notice of petition for rulemaking
(a) An interested person may petition an agency to adopt a new rule or amend or repeal an existing rule. Such petition may be submitted to an agency through mail, e-mail, or, if designed to receive messages, electronic mailing list, or through any other means.
(b) Each agency shall adopt a rule prescribing the form and procedures for the [submission,] consideration and disposition of the petition. The petition shall state clearly and concisely: the substance or nature of the rulemaking which is requested; the reasons for the request and the petitioner’s interest in the request; and references to the authority of the agency to take the requested action. The petitioner may provide the text of the proposed new rule, amended rule, or repealed rule.
(c) (No change.)
(d) An agency shall publish on its Internet website each petition for rulemaking received, no later than the date of publication of the notice of receipt of the petition under (c) above.
1:30-4.2 Agency response to petition
(a)-(d) (No change.)
(e) An agency shall publish on its Internet website each notice of action on a petition for rulemaking, no later than the date of publication of the notice under (d) above.
1:30-4.3 Failure to respond to petition
(a)-(b) (No change.)
(c) If the agency does not provide notice of a public hearing within 15 days of issuance of the Director’s notice, the Director shall schedule a public hearing to be conducted by the Office of Administrative Law. Notice of that hearing shall be provided to the petitioner and the public at least 15 days prior to the hearing. Whether the hearing is conducted by the agency or the Office of Administrative Law, the agency shall publish notice of the hearing on its Internet website, at least 15 days prior to the hearing.
(d)-(f) (No change.)

SUBCHAPTER 5. PROPOSAL PROCEDURE
1:30-5.1 Notice of proposed rule
(a) (No change.)
(b) The notice of proposal shall include a heading, [that] which shall include, in the following order:
1. - 8. (No change.)
9. An announcement of the public’s opportunity to be heard regarding the proposal, which shall include:
   i. - ii. (No change.)
iii. The name[,] and address [and telephone number] of the person(s) to receive postally-mailed written [or] comments and, if an agency intends to receive oral comments telephonically, the telephone number of the person(s) to receive such comments; [and]
iv. An address to which comments may be submitted through the agency’s e-mail system or, if designed to receive messages, electronic mailing list; and
[v.] v. If the agency chooses to accept comments by electronic[ally] facsimile, a facsimile telephone number (FAX number) [and/or e-mail address].
(c) (No change.)
(d) The notice of proposal shall include the full text of the proposed new rule[,] or amendment, [repeal or readoption,] specifically indicating additions and/or deletions [of any rule being repealed or recodified].
1:30-5.2 Publication and distribution of notice of proposal
(a) [Upon] After the OAL’s receipt of a notice of proposal [which] that conforms to the requirements of N.J.A.C. 1:30-5.1:
1. The OAL shall submit the notice, within two business days of receipt, [the notice, other than a notice of a Federally required rule (see N.J.A.C. 1:30-3.7,)] to the Senate and the General Assembly;
2. (No change.)
3. The agency shall mail or e-mail either the notice of proposal, as filed, or a statement of the substance of the proposed action to [those]:
   i. Interested persons;
ii. Those persons who have made timely request of the agency for notice of its rulemaking actions; and

iii. Those persons on the agency’s electronic mailing list or similar type of subscription-based e-mail service;

4. (No change.)

5. The agency shall [make available electronically] publish the notice of proposal on its [web site , through the largest nonproprietary cooperative public computer network, either the notice of proposal, as filed, or a statement of the substance of the proposed action] Internet website, no later than the date of publication of the notice in the New Jersey Register; and

6. The agency shall undertake an additional method of publicity other than publication in the Register[, reasonably calculated to inform those persons most likely to be affected by or interested in the proposed rule]. Each agency shall adopt rules prescribing the manner in which it shall provide additional publicity under this paragraph, which rules shall set forth the circumstances under which each additional method shall be employed.

i. (No change.)

ii. The additional method of publicity may be by:

(1)-(2) (No change.)

(3) Distribution of a press release to the news media; or

(4) Posting of a notice in an appropriate location(s), including the agency’s Internet website[.]

(A) If an agency’s rule on its method of additional publicity promulgated pursuant to this paragraph provides that the agency’s method shall be posting of notice on its Internet website, the publication of a notice of proposal from the agency on the agency’s Internet website pursuant to (a)3 above shall satisfy the additional publicity requirements of this paragraph for that notice of proposal.

[(5) Mailing to a distribution list; or

(6) Any other manner reasonably calculated to inform those persons most likely to be affected by or interested in the intended action.]

(b) Additional notice of the proposal under (a)3, [through 4, and 6 above shall be provided at least 30 days prior to the close of the public comment period.

(c) (No change.)

1:30-5.3 Informal public input; notice of pre-proposal

(a)-(c) (No change.)

(d) An agency shall afford all interested persons a reasonable opportunity to submit data, views, comments, or arguments, orally or in writing, on the proposed action, and shall fully consider all written and oral submissions, including any written submissions received by the agency through its e-mail systems or, if designed to receive messages, electronic mailing lists.

(e) An agency shall distribute a notice of pre-proposal to interested persons through the use of an electronic mailing list or similar type of subscription-based e-mail service, and make the notice available for public viewing through publication on the agency’s Internet website, no later than the date of publication of the notice in the New Jersey Register.

1:30-5.4 Opportunity to be heard

(a)-(c) (No change.)

(d) To provide a full comment period, the agency shall accept all public comments postmarked or, if submitted by e-mail or through an electronic mailing list, bearing an e-mail sent date or list posting date within the designated comment period set forth in the notice of pre-proposal or notice of proposal, or as thereafter extended. If the designated comment period ends on a Sunday or postal holiday, the agency shall accept public comments postmarked through the next postal business day after the last day of the comment period.

(e) (No change.)

1:30-5.5 Public hearings

(a) (No change.)

(b) If a public hearing is to be held as part of a proceeding for a pre-proposal or a proposal, the agency shall provide at least 15 days’ notice of the public hearing.

1. (No change.)

2. When a public hearing is scheduled after the notice of pre-proposal or proposal has been published, notice of the public hearing shall be published in the New Jersey Register, if such publication provides 15 days’ notice of the hearing. If timely Register publication is not feasible, notice of the public hearing may be published in the Register with less than 15 days’ notice as long as 15 days’ notice of the public hearing is given in another manner reasonably calculated to reach the interested public. A copy of such notice shall be filed with OAL. An agency shall also publish notice of a public hearing under this paragraph on the agency’s Internet website at least 15 days prior to the hearing date.

(c)-(h) (No change.)

1:30-5.6 Rulemaking record

(a) The agency shall retain a record of any oral and written comments or other material received in response to a proposal (N.J.A.C. 1:30-5.1) or a public hearing (N.J.A.C. 1:30-5.5) for a period of one year following the date of publication. The rulemaking record shall include the following:

1. The date, the method of issuance, and a copy of any notices concerning the rule activity, including:

i. Any notice mailed to interested persons or e-mailed pursuant to N.J.A.C. 1:30-5.2(a)(a); and

(ii) Any notice to the news media pursuant to N.J.A.C. 1:30-5.2(a); and

(iii. Any notice made available electronically pursuant to N.J.A.C. 1:30-5.2(a)(a); and

(iv). (No change in text.)

2. -3. (No change.)

(b)-(d) (No change.)

SUBCHAPTER 6. PROCEDURE UPON ADOPTION

1:30-6.1 Notice of adoption

(a) When [a] an agency adopts a proposed rule, the agency shall prepare a “notice of adoption” and submit the notice to the OAL. The notice of adoption shall comply with the requirements of this section.

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

(d) An agency shall also publish the notice of adoption on the agency’s Internet website, no later than the date of publication of the notice in the New Jersey Register.

1:30-6.3 Variance between the rule as proposed and as adopted

(a)-(c) (No change.)

(d) An agency submitting a public notice under (c) above shall comply with the requirements for notice, in addition to publication in the New Jersey Register, set forth in N.J.A.C. 1:30-5.2(a)(a) through 6. The publication of the notice on the agency’s Internet website pursuant to N.J.A.C. 1:30-5.2(a)(a) shall occur no later than the date of publication of the notice in the New Jersey Register. Such agency shall also provide a comment period of 60 days from the date the public notice is published in the New Jersey Register in which interested parties may present their views on the new proposed changes. Upon the conclusion of the 60-day public comment period, the agency may proceed with a notice of adoption in accordance with the provisions of N.J.A.C. 1:30-6. As part of the notice of adoption, the agency shall include an appropriately-headed section devoted to the substantial changes contained in the public notice, listing all parties submitting comments concerning the provisions of the proposed rule changes contained in the public notice, summarizing the content of the submissions that are related to the proposed rule changes contained in the public notice, and providing the agency’s response to the data, views, and arguments contained in the relevant submissions.

(e)-(f) (No change.)

1:30-6.4 Expiration date for adopted rule

(a)-(g) (No change.)

(h) In the case of a readoption without changes to the existing chapter, or a readoption with technical changes as approved by the Office of Administrative Law, an agency may continue in effect an expiring or a readoption (hereinafter, “a notice of readoption”) with the Office of Administrative Law for
COMMUNITY AFFAIRS

DIVISION OF CODES AND STANDARDS

Continuing Care Retirement Communities

Rights of Residents

Proposed Amendments: N.J.A.C. 5:19-1.1, 1.3, 4.1, 4.2, 6.2, 6.3, 6.4, and 6.5

Proposed Recodification with Amendments: N.J.A.C. 5:19-9 as 5:19-13


Authorized By: Richard E. Constable, III, Commissioner, Department of Community Affairs.


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


Submit written comments by January 16, 2015, to:

Gabrielle N. Gallagher
Department of Community Affairs
PO Box 800
Trenton, New Jersey 08625
Fax No. (609) 984-6696

gabrielle.gallagher@dca.state.nj.us

The agency proposal follows:

Summary

The below amendments, repeal, and new rules are proposed in order to implement the “Bill of Rights for Continuing Care Retirement Community Residents in Independent Living Act,” P.L. 2013, c. 167. This Act establishes rights of the residents and requires that each continuing care retirement facility post and distribute a statement of residents’ rights. The Act also requires that the facility supply residents with financial information, including fees for services not covered and the facility’s annual disclosure statement. Additionally, the Act provides for the cancellation of the continuing care agreement by the resident or by the facility. The proposed amendments, repeal, and new rules incorporate the rights of residents established by the Act into the Continuing Care Retirement Community rules.

1. N.J.A.C. 5:19-1.1: The proposed amendments add a reference to the Bill of Rights for Continuing Care Retirement Community Residents in Independent Living Act and also add a statement to make it clear that these rules do not supersede those promulgated by other agencies.

2. N.J.A.C. 5:19-1.3: The proposed amendments add a reference to the Bill of Rights for Continuing Care Retirement Community Residents in Independent Living Act to the definition of “Act,” add a definition for “Bill of Rights for Continuing Care Retirement Community Residents in Independent Living,” add a reference to the rule for the determination of a reasonable application fee to the definition of “application fee,” and replace “household unit” with “one or more persons” in the definition of “living unit.”

3. N.J.A.C. 5:19-2.12 is proposed for repeal. The provisions contained in this section have been included in the proposed amendments to N.J.A.C. 5:19-13.2 and are generally applicable to violations of the Act or regulations.

4. N.J.A.C. 5:19-4.1 and 4.2: The proposed amendments add references to the Bill of Rights for Continuing Care Retirement Community Residents in Independent Living Act (hereinafter referred to as “the Act”) and its requirements.

At N.J.A.C. 5:19-4.1(b), the proposed amendments also change “plain English” to “clear and plain” language and establish a requirement that the disclosure statement reflect the terms of the Act, including an explanation of the rights and responsibilities of residents.

At N.J.A.C. 5:19-4.2(a)(12), 13, and 14, the provisions regarding the contents of the disclosure statement are proposed to be amended to add a reference to the Bill of Rights, to require that the notice include the right to review and to cancel the agreement within 30 days after signing and the right to a refund, and to state that, as part of the disclosure, the facility’s rules and regulations are to be provided to the resident and that these rules must be consistent with the Bill of Rights for Continuing Care Retirement Community Residents in Independent Living.

The proposed amendments also add language to N.J.A.C. 5:19-4.1(c) to state explicitly that the obligation of full and fair disclosure is ongoing and applies to all of those involved in the ownership or management of the facility and that the disclosure statement must be clear (amendments to subsections (b) and (c)).

Finally, a new N.J.A.C. 5:19-4.2(a)15 is proposed to cover other information that may be included.

5. N.J.A.C. 5:19-6: The proposed amendments to N.J.A.C. 5:19-6.2, Notice of rescission, provide that language be added stating that expenses incurred by the provider at the resident’s request must be itemized and supported by appropriate documentation. Additionally, the right to cancellation and to a full or partial refund of the entrance fee is added to the notice. Additionally, there is a proposed amendment to N.J.A.C. 5:19-6.2 to require that the notice be in 12-point boldface type or larger, instead of the current 10-point boldface type or larger. N.J.A.C. 5:19-6.3(a) provides, in part, that occupancy of the living unit by the resident prior to the expiration of the 30-day rescission period shall not be construed as a waiver of any part of said rescission period. The subsection is amended to provide that, if desired, the resident may wait until the end of the 30-day rescission period to take occupancy, without waiver or penalty. A new N.J.A.C. 5:19-6.3(c) is added requiring that the amount of the entrance fee, the method by which the provider has calculated the amounts refundable, and the amounts thereof that are refundable (including any conditions that may affect the amount of any refund) shall be set forth in a clear and conspicuous manner, in plain and easily understood language in the contract.

The requirements for the content of the continuing care agreement, at N.J.A.C. 5:19-6.4(a), replace “plain English” with “clear and plain”