

# NEW JERSEY REGISTER



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## REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS\*, PAGE 859.

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(Includes rules filed through March 17, 1986)

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**\*MOST RECENT UPDATE TO ADMINISTRATIVE CODE: FEBRUARY 18, 1986.**  
See the Register Index for Subsequent Rulemaking Activity.  
**NEXT UPDATE WILL BE DATED MARCH 17, 1986.**

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# RULE PROPOSALS

**Interested persons** may submit, in writing, information or arguments concerning any of the following proposals until **May 21, 1986**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

On occasion, a proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice.

## ADMINISTRATIVE LAW

### (a)

#### OFFICE OF ADMINISTRATIVE LAW

#### Uniform Administrative Procedure Rules

#### General Hearing Rules

#### Special Hearing Rules

#### Rule Pre-proposal: N.J.A.C. 1:1 and 1:2 through 1:21

Authorized By: Ronald I. Parker, Acting Director, Office of Administrative Law.

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

**Interested persons** may submit comments in writing by May 30, 1986 to:

Steven L. Lefelt, Deputy Director  
Office of Administrative Law  
Quakerbridge Plaza, Bldg. 9, CN 049  
Quakerbridge Road  
Trenton, NJ 08625

**Take notice** that Acting Director Ronald I. Parker, Office of Administrative Law, will conduct **public hearings** on this pre-proposal at the following times and locations:

May 17, 1986 at 1:30 p.m.  
New Jersey State Bar Association Annual Meeting  
Bally's Park Place Casino Hotel  
6th floor (Dennis I)  
Park Place and Boardwalk  
Atlantic City, New Jersey  
May 30, 1986 at 9:30 a.m.  
Office of Administrative Law  
Hearing Room 9  
Quakerbridge Plaza, Bldg. 9  
Quakerbridge Road  
Trenton, New Jersey

Anyone who plans to attend the public hearings and wishes to be scheduled to comment should call (609) 588-6500.

The pre-proposal is known as PPR 1986-1.

#### Summary

With this pre-proposal, the OAL is introducing a complete revision of the Uniform Administrative Procedure Rules. Changes are both

substantive and organizational, representing a thorough evaluation by the OAL of its rules. The OAL has decided to pre-propose the new rules in order to receive input from agencies and the public before finalizing the revision for proposal.

One significant change is that the rules have been reorganized to reflect the chronological order of administrative proceedings, from commencement of the case through rendering of initial and final decisions. The revision also clarifies ambiguities in the current rules, in some cases by making procedures more detailed and therefore easier to understand. Obsolete or superfluous provisions have been eliminated. Separate subchapters have been created for all the rules dealing with representation, for the conduct of uncontested cases and for mediation by the OAL. Procedures for conduct of conference hearings and hearings on the papers, previously contained in N.J.A.C. 1:2-2.1 et seq., have been integrated into the General Hearing Rules. The pre-proposal also encompasses changes made in the Special Hearing Rules in order to conform those rules to the revised U.A.P.R.

Specific changes in the rules are outlined below. The list of changes is not exhaustive, however, and it is suggested that interested parties carefully read the entire pre-proposal.

#### SUBCHAPTER 1. APPLICABILITY, SCOPE, CITATION OF RULES, CONSTRUCTION AND RELAXATION, COMPUTATION OF TIME

(1) Clarifies that the Uniform Rules govern the procedure of contested cases whether they are conducted by the OAL, an agency head or any other administrative agency. The rules also expand the number of Uniform Rules that are not applicable to exempt agencies.

(2) Clarifies that agency procedural rules are invalid if in conflict with OAL rules, even if the agency rules were adopted prior to creation of OAL.

(3) Clarifies that no other agency may propose procedural rules designed to regulate the conduct of contested cases and the rendering of administrative adjudications. However, the rules permit specific pleading and other pre-transmittal requirements to be regulated by the agencies.

(4) States a general rule that procedural rules may be relaxed when necessary to prevent unfairness or injustice.

(5) Provides that judges may apply the New Jersey Court Rules when suitable if there is no applicable Uniform Rule, except for court rules regarding third party practice and class action designations.

(6) Eliminates guidance on what is and is not a contested case. Language from these provisions has been added to expanded definition of "contested case" in Subchapter 2.

## NEW JERSEY REGISTER

The official publication containing notices of proposed rules and rules adopted by State agencies pursuant to the New Jersey Constitution, Art. V, Sec. IV, Para. 6 and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Issued monthly since September 1969, and twice-monthly since November 1981.

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*The NEW JERSEY ADMINISTRATIVE CODE is published on a continuing basis by OAL Publications of the Office of Administrative Law. Subscription rates for this 34-volume, regularly updated set of State administrative rules are available on request. The Code is sold either in the full set or in one to three volumes depending on the Department coverage desired.*

**SUBCHAPTER 2. DEFINITIONS**

Expands number of definitions and centralizes definitions in one subchapter.

**SUBCHAPTER 3. COMMENCEMENT OF CONTESTED CASES; JURISDICTION OF THE OFFICE OF ADMINISTRATIVE LAW**

(1) Provides that Director of the OAL is agency head for purposes of review of the following matters as they relate to proceedings before the OAL: recusal motions; non-lawyer appearances and imposition of conditions and limitations on non-lawyers; imposition of sanctions consisting of the assessment of costs or expenses, and disqualification of attorneys.

(2) Allows transmitting agencies to request return of a previously transmitted case before evidentiary hearing begins.

**SUBCHAPTER 4. AGENCY RESPONSIBILITY BEFORE TRANSMISSION TO THE OFFICE OF ADMINISTRATIVE LAW**

(1) Expands the time from 10 to 30 days for an agency to determine upon a party's petition whether a matter is contested.

(2) Clarifies that upon request the OAL will assign an ALJ to conduct pre-transmittal settlement efforts for the agency unless the OAL Director states in writing why a particular request cannot be honored. Specifies that ALJ who conducts such settlement efforts will not be assigned to hear the case if settlement is not reached and the matter is transmitted for hearing.

**SUBCHAPTER 5. PLEADINGS**

(1) Refers to particular agency with subject matter jurisdiction for specific pleading requirements.

(2) Enlarges upon standards for amendment of pleadings. Pleadings may be freely amended in the interest of efficiency and expediency. Where party objects to admission of proofs not conforming to pleadings and not previously considered by state agency in rejecting initial application or petition, judge decides whether to permit amendment and, if so, whether to retain jurisdiction and continue the matter or order it returned to the agency.

**SUBCHAPTER 6. SERVICE AND FILING OF PAPERS; FORMAT**

(1) Creates procedure whereby filer can obtain from the Clerk a copy of the paper filed marked with the date of filing.

(2) Permits Clerk or judge to cure defects in filing or reject papers that do not conform to filing requirements.

**SUBCHAPTER 7. FILING AND TRANSMISSION OF CONTESTED CASES IN THE OAL**

(1) Clarifies the provisions permitting an agency 30 days to attempt settlement before transmittal to the OAL.

(2) Eliminates term "initial papers" and certain information currently required in transmittal form that is no longer necessary.

(3) Requires transmitting agency head to request in transmittal form a court stenographer if preferred over an audiotape recording. Clarifies who is responsible for paying the stenographer's fee. The transmitting agency must also indicate, when known, whether a barrier-free hearing location for handicapped persons will be necessary.

(4) Specifies the documents that an agency may attach to the transmittal form and requires that if any attached documents have not been exchanged between the parties, they be served upon or offered to the parties by the agency.

(5) Eliminates the possibility of any agency transmitting a case to the OAL without issue being joined.

(6) Permits Clerk to return improperly transmitted case or to cure defect and retain it.

(7) Places format of papers provisions in Subchapter 6, Service and Filing of Papers; Format.

**SUBCHAPTER 8. SCHEDULING; CLERK'S NOTICES; ADJOURNMENTS; INACTIVE LIST**

(1) Elaborates on when Clerk's notices required, contents of notices and Clerk's responsibilities in serving notices. Allows for notice by parties in emergent matters and telephone notice in appropriate situations.

(2) Sets forth specific situations and standards for when particular types of proceedings shall be scheduled by Clerk; expands conference hearing process to welfare and special education cases and cases where

all parties agree to that procedure; specifies flexible limitations on the scheduling of prehearings.

(3) Sets out order to show cause process for agencies which commence an action in such a manner.

(4) Creates fast-tracking procedure for expedited scheduling and processing of certain types of cases which require speedy resolution. Fast-tracking process eliminates formal discovery, mediation, prehearing conferences, post-hearing submissions, most adjournments and shortens time for issuance of decisions.

(5) Eliminates abandonment process; any failure to appear to be treated under sanctions section (1:1-13.4).

(6) Establishes general adjournment policy.

(7) Makes clear that adjournments will not be granted to complete discovery if parties have not complied with procedures for compelling discovery in proposed 1:1-9.4.

(8) Establishes separate inactive list rule and clarifies that cases will not generally be placed on inactive list to await appellate court decision.

**SUBCHAPTER 9. DISCOVERY**

(1) Requires judge to consider least burdensome alternative in ruling on discovery motions.

(2) Provides that parties may request an informal, voluntary, non-transcribed meeting with witnesses for another party in order to facilitate discovery.

(3) Requires a motion on good cause for physical and mental exams and depositions.

(4) Establishes specific time limits for parties who wish to object to or compel discovery and requires that telephone conference calls be used for this purpose instead of motions.

(5) Requires that the parties complete all discovery no later than five days before the first scheduled evidentiary hearing.

(6) Clarifies that sanctions can be imposed for discovery abuse without the necessity of first entering an order compelling discovery.

(7) Sets forth specific discovery rules for conference hearings. Precludes adjournments in these cases to permit discovery.

(8) Precludes discovery to prepare for a mediation.

**SUBCHAPTER 10. SUBPOENAS**

(1) Authorizes attorneys for parties to issue subpoenas in the name of the Clerk. Non-lawyers permitted to represent parties in contested cases are not authorized to sign subpoenas in the Clerk's name. (Note: Any reference in this chapter, including proposed rule 1:1-13.9(n), to the authority of the OAL to issue subpoenas is limited by *Hays v. Gulli*, 175 N.J. Super. 294 (Ch. Div. 1980), which held that the OAL assumes the same power of subpoena as is held by an agency for which the OAL is hearing a case.)

(2) Permits subpoenas to be used to compel attendance at depositions as well as hearings.

(3) Expands on content requirements of subpoenas, including requirement that party requesting subpoena include name and telephone number where party can be reached in the event of a problem, manner of service of subpoenas and specifies fees to which subpoenaed witnesses are entitled.

(4) Clarifies that parties seeking to enforce a subpoena may proceed in Superior Court and should not expect the OAL to seek enforcement of the subpoena.

(5) Eliminates the terms "subpoena duces tecum" and "subpoena ad testificandum."

**SUBCHAPTER 11. MOTIONS**

(1) Provides that all motions in which oral argument is directed be heard by telephone conference.

(2) Clarifies the process to be followed in opposing summary decision motions.

(3) Extends time from 10 to 45 days for deciding summary decision motions and motions concerning predominant interest in consolidated cases.

(4) Requires moving party in emergency relief applications to serve notice on all parties.

(5) Places interlocutory review rule (formerly N.J.A.C. 1:1-9.7) in Subchapter 13, Conduct of Cases.

#### SUBCHAPTER 12. PREHEARING PROCEDURES AND CONFERENCES

- (1) Limits prehearing conferences to situations where issues are unusually complex, numerous or novel, where hearing is expected to last two or more days or when any party requests it.
- (2) Requires parties at time of prehearing to be ready to discuss one or more alternate trial dates when parties and witnesses will be available.
- (3) Requires that prehearings shall be held by telephone conference unless the judge directs otherwise.
- (4) Requires that individual with authority to settle matter be present at conference or be readily available.
- (5) Clarifies the information required in prehearing orders, including the need for discovery completion dates.
- (6) Eliminates from prehearing order limitation on number of expert witnesses, direction with respect to filing briefs and statutory requirements mandating agency head decision date.

#### SUBCHAPTER 13. CONDUCT OF CASES

- (1) Provides guidance on what should be contained in order sealing record.
- (2) Representation rules moved to Subchapter 19.
- (3) Permits judge to accept friend or relative of a party or witness, a state or local agency employee or any other person to perform interpreter services if all parties agree.
- (4) Deletes provision relating to motion for sanctions for obstructive behavior of party, attorney or other representative.
- (5) Eliminates abandonments and permits judge to use initial decision to dismiss or grant relief when failure to appear is unexplained. Clarifies that judge may reschedule and impose sanctions if explanation is received. Permits judge to refuse to reschedule if judge concludes the party who failed to appear is intentionally attempting to delay the proceeding.
- (6) Enumerates fully judge's powers in presiding over prehearing activities, conducting hearings, developing the record and rendering initial decisions. Adds the power to question witnesses and to permit narrative testimony whenever appropriate.
- (7) Enlarges upon the procedures to be followed in the actual conduct of conference hearings, plenary hearings and telephone hearing.
- (8) Changes name of "hearing on the papers" to "proceeding on the papers" and establishes general rule for this type of proceeding. Matters will be scheduled for an in-person hearing and party given the option of submitting a certification in lieu of appearing at the scheduled hearing.
- (9) Establishes 30-day time limit for filing of post-hearing submissions. If judge permits a transcript, time frame will run from receipt of the transcript. Requires that references to initial decisions contain either an OAL docket number or citation to the N.J.A.R. Eliminates need for judge to close record in writing.
- (10) Clarifies that orders may be rendered orally as well as in writing.
- (11) Incorporates five-day rule into orders section and clarifies that Director is agency head for certain interlocutory rulings. Clarifies that the five-day period during which a party may take an interlocutory appeal is to run from the date of the written order or oral ruling, whichever is rendered first. Establishes procedure for objecting to requests for interlocutory review and for submitting arguments in favor of judge's action. Clarifies procedure for extending time limits under interlocutory review rule.
- (12) Increases security deposit for transcript from \$100.00 to \$200.00. Clarifies that only the Public Advocate can obtain from other party cost for transcript in certain situations and not any agency "representing the public interest."
- (13) Establishes standards and guidelines for disqualification of judges, which generally incorporate same standards as are found in New Jersey Court Rules.
- (14) Sets forth procedures to be followed in the event of a judge's death, departure, disability or disqualification.

#### SUBCHAPTER 14. EVIDENCE

- (1) Makes presumption of authenticity the general rule, provided documents are disclosed to parties prior to hearing.
- (2) Provides guidance for treatment of large exhibits.
- (3) Changes standard marking of "A" on exhibit to stand for "appellant" rather than "agency." Adds marking of "I" for "intervenor."
- (4) Conforms expert witness rule to changes in New Jersey Rules of Evidence.
- (5) Clarifies that proposed offers of settlement, adjustment or stipulation that are not agreed to are inadmissible as evidence.

- (6) Clarifies that stipulations are regarded as evidence.
- (7) Permits witness to testify by telephone if all parties agree and judge finds good cause.
- (8) Introduces procedure whereby party may offer as evidence a witness' previously transcribed testimony. (Note: This provision may be proposed separately as part of N.J.A.C. 1:1-15.2.)

#### SUBCHAPTER 15. INTERVENTION AND PARTICIPATION

- (1) Authorizes judge to impose responsibility of notifying potential intervenors or participants upon the Clerk or any party.
- (2) Affords participants the right to file exceptions.

#### SUBCHAPTER 16. CONSOLIDATION OF TWO OR MORE CASES; MULTIPLE AGENCY JURISDICTION CLAIMS; DETERMINATIONS OF PREDOMINANT INTEREST

- (1) Clarifies that consolidation motions involving cases commenced in two or more agencies shall be scheduled for telephone oral argument, but consolidations from a single agency are to be handled without oral argument.
- (2) Provides that when an exempt agency is found to have the predominant interest, an ALJ will hear the case unless the agency prefers its own personnel to hear the matter. Further provision is made for appointing the hearer a special ALJ to eliminate any possible jurisdictional problems. (Note: This provision was adopted separately as N.J.A.C. 1:1-14.6(d) prior to publication of this preproposal.)

#### SUBCHAPTER 17. INITIAL DECISIONS; EXCEPTIONS; FINAL DECISION; REMAND; EXTENSIONS OF TIME LIMITS

- (1) Specifies that time for issuance of initial decision in conference hearings is 21 days after last day of evidentiary hearing; establishes time limit for initial decisions following mediation.
- (2) Clarifies that OAL relinquishes jurisdiction upon filing of initial decision.
- (3) Oral decisions permitted generally in any case where the judge determines that circumstances appropriately permit an oral decision, and the questions of fact or law are noncomplex.
- (4) Clarifies the elements required to be discussed within a written and oral initial decision.
- (5) Clarifies the content of exceptions; excludes exceptions in settled cases unless permitted by agency head or judge.
- (6) Allows for motions to reopen the record before an initial decision is filed, but only for extraordinary circumstances.
- (7) Clarifies the procedures for an agency head to remand a matter to the OAL.
- (8) Specifies procedure for granting extensions of time limits for filing decisions and exceptions. Replaces the specific standard for extension requests with the statutorily required "good cause." Permits agency head unilaterally to grant extension of time for filing exceptions and replies.

#### SUBCHAPTER 18. SETTLEMENTS AND WITHDRAWALS

- (1) Clarifies the methods that may be used to settle cases. Eliminates the distinction between "Order Concluding Contested Case" and "Initial Decision—Settlement." All settlements are disposed of by initial decisions. All settlements will require the disclosure of the terms.
- (2) Clarifies that withdrawals should only be requested when party voluntarily abandons right to take action against another party or to defend against action of another party and cannot be used as a settlement device. Directs that disposition of withdrawal requests to be by initial decision, if withdrawal granted; or by order, interlocutorily reviewable, if withdrawal denied.

#### SUBCHAPTER 19. REPRESENTATION

- (1) Creates separate subchapter for all rules regarding representation, including appearances by out-of-state attorneys, non-lawyer representation and appearance without representation.
- (2) Permits judge to disqualify an attorney whose appearance violates ethics rules, but requires that if any disciplinary action is indicated, the matter must be referred to an appropriate disciplinary body. (Note: This provision has been proposed as N.J.A.C. 1:1-3.8(d) but was not adopted at the time this pre-proposal was prepared.)
- (3) Simplifies non-lawyer representative application procedure by consolidating process; eliminates permanent application process because it

was too cumbersome. Permits applications orally and by written Notice of Appearance/Application filed in each case.

(4) Clarifies that judge will determine whether non-lawyer representing recipient or applicant for services fulfills federal requirements; permits Division of Medical Assistance representative to apply orally at hearing; clarifies that non-lawyer representing local welfare agency need not have expertise other than knowledge of the matter in controversy; clarifies that legal services non-lawyer may make oral application in welfare cases, and that legal services non-lawyer need not state that the represented party is an indigent; requires close corporation principal to describe the close nature of the corporation in the Notice/Application.

(5) Creates separate rule for conduct of non-lawyers and limitations on practice, by dividing lengthy non-lawyer rule into two rules.

#### SUBCHAPTER 20. MEDIATION BY THE OFFICE OF ADMINISTRATIVE LAW

Creates mediation process and specifies that the mediator shall be an ALJ other than the judge who will be assigned to preside over the hearing.

#### SUBCHAPTER 21. UNCONTESTED CASES IN THE OAL

Establishes a separate, very informal, process for transmission and conduct of uncontested cases in the OAL.

### CHAPTER 2 RULES FOR SUMMARY PROCEEDINGS

Deleted since rules for conference hearings are incorporated into Uniform Rules. Rules for proceedings on the papers are contained in Uniform Rules and in special rules for Water Emergency and Motor Vehicles hearings (Chapters 7 and 13).

### CHAPTER 6A SPECIAL EDUCATION PROGRAM

No change except to conform citations to Uniform Rules and eliminate presumption of authenticity since that is now general rule for all hearings under the Uniform Rules.

### CHAPTER 7 DEPARTMENT OF ENVIRONMENTAL PROTECTION EMERGENCY WATER SUPPLY ALLOCATION PLAN CASES

Procedure changed to conform with new proceeding on the papers rule.

### CHAPTER 10 PUBLIC WELFARE HEARINGS

No changes except to conform codification and citations to Uniform Rules.

### CHAPTER 10A DEPARTMENT OF CORRECTIONS INMATE DISCIPLINE CASES

No changes except to conform citations to Uniform Rules.

### CHAPTER 11 INSURANCE FILING HEARINGS

No changes except to conform codification and citations to Uniform Rules.

### CHAPTER 13 DIVISION OF MOTOR VEHICLES EXCESSIVE POINTS AND SURCHARGE CASES

Created separate chapter for hearings formerly included in Rules for Summary Proceedings. Procedure changed to conform to new proceedings on the papers rule.

### CHAPTER 20 HEARINGS BEFORE THE PUBLIC EMPLOYMENT RELATIONS APPEAL BOARD

No changes except to conform codification and citations to Uniform Rules.

### CHAPTER 21 TRADE SECRET CLAIMS

No changes except to conform citations to Uniform Rules.

Full text of the pre-proposal follows (additions shown in boldface thus; deletions shown in brackets [thus]).

### SUBCHAPTER 1. APPLICABILITY, SCOPE, CITATION OF RULES, CONSTRUCTION AND RELAXATION; COMPUTATION OF TIME

#### 1:1-1.1 Applicability; scope; rules of special applicability

(a) Subject to any superseding Federal or State law, this chapter shall govern the procedural aspects pertaining to transmission, the conduct of the hearing and the rendering of the initial and final decisions in [the conduct of] all contested cases in the Executive Branch of the State Government (see N.J.S.A. 52:14F-5) [,], [whether by the Office of Administrative Law or by the agencies themselves pursuant to statute (see N.J.S.A. 52:14F-8 or N.J.S.A. 52:14B-2(a)), and the conduct of all uncontested cases by the Office of Administrative Law.] **This chapter and rules of special applicability govern the procedure whether the contested case is before the Office of Administrative Law, an agency head or any other administrative agency. Subchapter 21 governs the conduct of certain uncontested cases handled by the Office of Administrative Law under N.J.S.A. 52:14F-5(o).**

(b) In the event of conflict between this chapter and any other agency rule **except agency rules which incorporate statutory requirements**, this chapter shall prevail. Procedural rules [formerly] adopted by the agencies, **including those adopted prior to the creation of the Office of Administrative Law**, shall [continue to] apply to the extent they are not inconsistent with this chapter, with statutory requirements or with constitutional standards.

(c) Under N.J.S.A. 52:14F-5(e) no agency other than the Office of Administrative Law may hereafter [adopt] **propose** any rules to regulate the conduct of contested cases and the rendering of administrative adjudications. **Specific pleading and other pretransmittal requirements may be regulated by the agencies provided they are consistent with this chapter.**

(d) [(b)] **In addition to those rules that specifically govern a transmitting agency's responsibilities and the jurisdiction of the Office of Administrative Law, the [The] following Uniform Administrative Procedure rules are not intended to apply to contested cases heard in agencies exempt under N.J.S.A.52:14F-8:**

1. N.J.A.C. [1:1-5.1-5.5;] **1:1-10.1(c);**
2. N.J.A.C. [1:1-8.1, 8.2 and 8.5(a), (b) and (c);] **1:1-11.6;**
3. N.J.A.C. [1:1-9.7] **1:1-13.10;**
4. N.J.A.C. **1:1-15.2(b) and (c);**
5. N.J.A.C. **1:1-17.8**
6. N.J.A.C. **1:1-21.**

(e) [(c)] This chapter is subject to rules of special applicability to particular agencies. [to be hereafter adopted by the Office of Administrative Law in consultation with particular agencies.] **Such rules may be adopted by the Office of Administrative Law after consultation with a transmitting agency or at the request of a transmitting agency when the transmitted cases involve unique hearing requirements that are not addressed by this chapter. Where required by Federal law, rules of special applicability may be adopted by a transmitting agency with the concurrence of the Office of Administrative Law.**

#### 1:1-1.2 Citation of rules

This chapter shall be referred to as the "New Jersey Uniform Administrative Procedure Rules" [, 1980"] and may be cited as, e.g., N.J.A.C. 1:1-1.2.

#### 1:1-1.3 Construction and relaxation [; parties appearing without attorneys (pro se); parties represented by non lawyers]

(a) This chapter shall be construed to [secure] **achieve** just [determinations] **results**, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. [Unless otherwise stated, any procedural rule may be relaxed or dispensed with by a judge if adherence to it would result in unfairness or injustice.] **In the absence of rule, a judge may proceed [in any manner] in accordance with the New Jersey Court Rules, provided the rules are compatible with these purposes. Court rules regarding third party practice and class action designations may not be applied.**

[(b)] This chapter shall not be applied to impose excessive burdens upon either pro se parties or non-lawyer representatives of parties; formal requirements, particularly, shall be relaxed for their benefit. Time requirements shall not be relaxed unless the interests of justice manifestly require. Ultimate standards of proof and the burdens of production and persuasion shall not be relaxed.]

(b) **Except as stated in (c) below, procedural rules may be relaxed or disregarded if the judge determines that adherence would result in unfairness or injustice. The judge shall make such determinations and state the reasons for doing so on the record.**

(c) **The burden of proof shall not be relaxed. Statutory procedural requirements shall not be relaxed or disregarded except when permitted by the controlling federal or state statutes.**

[1:1-1.4 Definitions and applications

As used in this chapter, the term

“Agency head” means the person or body authorized by law to render final decisions in contested cases.

“Clerk” means the Clerk of the Office of Administrative Law or any such scheduling or docketing officer designated by the head of an agency, pursuant to N.J.S.A. 52:14F-8 or N.J.S.A. 52:14B-2(a), to oversee the administration of contested cases.

“Judge” means an administrative law judge of the State of New Jersey or, pursuant to N.J.S.A. 52:14F-8 or N.J.S.A. 52:14B-2(a), any other person presiding over a hearing in a contested case or, depending on the context, authorized by law to do so.

“Party” means any person or entity directly involved in a contested case, including a petitioner, respondent, intervenor, or State agency proceeding in any such capacity.

“Contested case” means a proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by any agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing. N.J.S.A. 52:14B-2.1]

[1:1-1.5 The nature of a contested case

(a) Pursuant to the statutory definition, a matter is a contested case where, by virtue of statute or constitutional requirement, a hearing is required before a State agency to determine rights, duties, obligations, privileges, benefits or other legal relations of specific parties. The required hearing must be pre-eminently adjudicatory and judicial in nature and not informational or intended to provide a forum for the expression of public sentiment on proposed agency action. A matter which is susceptible to administrative resolution avoiding factual or legal dispute is not a contested case. Therefore, in order for a matter to be a contested case which must be heard by a judge:

1. A hearing must be required by statute or constitutional provision; and
2. The matter must not be susceptible of informal resolution on the administrative level (see N.J.A.C. 1:1-5.4); and
3. The required hearing must be designed to result in an adjudication concerning the rights, duties, obligations, privileges, benefits or other legal relations of specific parties over which there exist disputed questions of fact, law or disposition.

(b) Where specific parties and the general public are involved in one proceeding, both the constitutional or statutory basis and the adjudicatory character requirements of contested cases are satisfied only by the specific parties who will be affected by the outcome substantially, specifically, and directly.]

[1:1-1.6 The characteristics of contested cases

(a) Within the scope of the controlling requirements in N.J.A.C. 1:1-1.5, the following are some of the qualities of contested cases:

1. Contested cases involved genuinely disputed questions of fact, law, or result, requiring findings, interpretations, or applications to be made.
2. Parties in contested cases may include:
  - i. Particular individuals; or
  - ii. Specific businesses or other entities, including governmental agencies; or
  - iii. Finite group of individuals, businesses, or other entities with related interests.
3. Contested cases resolve questions relating to the rights, entitlements, and obligations of specific parties even in large, but defined, groups. They do not deal with broad policy issues affecting entire industries or large and undefined classes of people. In some instances an agency's matters may be contested cases (judicial) in part and uncontested cases (legislative or regulatory) in part. It is necessary in each such matter to determine whether the issues can be fruitfully separated or whether the needs of fairness, efficiency, and thoroughness require the issues to be handled in a single, integrated proceeding.

4. Contested cases deal with factual, legal or dispositional issues relating to past, current, or proposed activities or interests of particular parties.

5. Contested cases are adversary proceedings involving particular parties. An agency itself may be as an adversary party.

6. Contested cases involve subject matter susceptible to the receipt of evidence or particularized legal argument, i.e., concerning the rights or interests of particular parties as opposed to the community at large or loosely defined segments thereof.

7. In a contested case, the final action in the matter will tend to be particular and immediate in effect, though possibly long range. It will relate to specific parties. The final action will not be general and in futuro affecting broad, undefined groups of people or entities.

8. A case is contested if the factual issues to be determined are such that fairness requires a particular party:

- i. To know fully the factual bases upon which the agency decision will rest;
- ii. To meet those facts with evidence of its own which characterizes them or rebuts them; or
- iii. To cross-examine to test the validity and solidity of those factual bases.

9. A case is contested if the legal issues in the matter are such that the personal or property rights of a particular party will be adversely affected in a special way by an interpretation or application of law or agency rule or regulation.]

[1:1-1.7 The characteristics of matters which are not contested cases

(a) Matters are not contested cases when they may be categorized as follows:

1. Adjudicatory hearings not required by constitutional rule but required by statute for the purpose of affording, e.g., “interested parties the opportunity to present their positions,” where the case will not result in a direct disposition of the rights, duties, obligations, privileges, benefits or other legal relations of the “interested parties.”

2. Objector or general public hearings, where there is no statutory or constitutional right to an adjudicatory hearing and the hearing which is held will not result in a direct or specific disposition of the rights, duties, etc., of the “objector” or “public parties” as individuals.

3. Matters which will affect the rights of a specific party, but where there is neither a statutory nor a constitutional right to an adjudicatory hearing.

4. Hearings, whether required by statute or not, which are legislative in nature; i.e., designed to make known a proposed rule, regulation, or general policy and to receive views from the general public; and where the proceeding will not result in a disposition of specific rights of specific parties for whose benefit the hearing is held.

5. Hearings, whether required by statute or not, involving inquiry which is general in respect of a policy decision and is designed to determine whether a contemplated standard should or should not apply to the public generally or to everyone in a field of activity which the agency is authorized to regulate, rather than to individual parties.]

[1:1-1.8 Agency responsibility before transmission to the Office of Administrative Law

Agencies should not transmit contested cases to the Office of Administrative Law before the cases are perfected and issue is joined. Matters will continue to commerce and terminate in the agencies themselves. Agencies should attempt to resolve or adjust matters administratively by explaining fully to the parties affected the proposed agency action and the factual information and legal authority upon which it is based. Where it would be fruitful, agencies should also continue to apply or develop procedures for resolving particular types of contested matters informally on the administrative level. (See N.J.A.C. 1:1-5.4.)]

[1:1-1.9 The Attorney General's function

When a question arises whether a particular matter is a contested case, legal advice should be obtained from the Attorney General's Office.]

[1:1-4.1] 1:1-1.4 Computation of time

In computing any period of time fixed by rule or judicial order, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or legal holiday. In computing a period of time of less than seven days, Saturday, Sunday and legal holidays shall be excluded.

SUBCHAPTER 2. DEFINITIONS

1:1-2.1 Definitions

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

“Adjournment” means postponement of the hearing until another time.

“Administrative law judge” means a person appointed pursuant to N.J.S.A. 52:14F-4 or N.J.S.A. 52:14F-5(m) and assigned by the Director of the Office of Administrative Law to preside over contested cases and other proceedings.

“Administrative rule” means each agency statement of general applicability and continuing effect that implements or interprets law or policy,

or describes the organization, procedure or practice requirements of any agency. The term includes the amendment or repeal of any rule, but does not include: (1) statements concerning the internal management or discipline of any agency; (2) intra-agency and inter-agency statements; and (3) agency decisions and findings in contested cases. N.J.S.A. 52:14B-2(e).

"Affidavit" means a written statement that is signed and sworn or affirmed to be true in the presence of a notary public or other person authorized to administer an oath or affirmation.

"Agency" includes each of the principal departments in the executive branch of the State government, and all boards, divisions, commissions, agencies, departments, councils, authorities, offices or officers within any such departments now existing or hereafter established and authorized by statute to make, adopt or promulgate rules or adjudicate contested cases, except the office of the Governor. N.J.S.A. 52:14B-2(a).

"Agency head" means the person or body authorized by law to render final decisions in contested cases.

"Appellant" means the party who is requesting a reversal or modification of a prior result.

"Burden of producing evidence" means the obligation of a party to introduce evidence when necessary to avoid the risk of a contrary decision or peremptory finding on a material issue of fact.

"Burden of proof" means the obligation of a party to meet the requirements of a rule of law that a fact be proved by a preponderance of the evidence or by clear and convincing evidence. Burden of proof is synonymous with burden of persuasion.

"Clerk" means the Clerk of the Office of Administrative Law or any such scheduling or docketing officer designated by the head of an agency to oversee the administration of contested cases.

"Complainant" means the party who requests action or relief by filing a complaint.

"Conclusion of hearing" means that time when the record for a case closes and after which no subsequently submitted information may be considered by the judge.

"Conference hearing" means a proceeding conducted before an administrative law judge, in which discovery, prehearing motions and post-hearing submissions are limited.

"Contested case" means an adversary proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing. N.J.S.A. 52:14B-2. The required hearing must result in an adjudication concerning the rights, duties, obligations, privileges, benefits or other legal relations of specific parties over which there exist disputed questions of fact, law or disposition relating to past, current or proposed activities or interests. Contested cases are not informational nor intended to provide a forum for the expression of public sentiment on proposed agency action or broad policy issues affecting entire industries or large, undefined classes of people.

"Discovery" means the process by which a party is permitted on demand or upon motion granted by a judge to view, inspect or receive a copy of documents, and gain other information necessary to prepare a case for hearing.

"Docket number" means the number given to a case by the Office of Administrative Law, which contains the abbreviation of the agency that sent the case to the Office of Administrative Law, a sequence number and the year. Sample:

HPW	8831	=	82
agency	sequence no.		year

"Evidence" is the means from which inferences may be drawn as a basis of proof in the conduct of contested cases, and includes testimony in the form of opinion and hearsay.

"Filing" means mailing or personally delivering an original or clear copy of a paper to the proper office or officer.

"Final decision" means that decision from which an appeal to the courts may be taken.

"Finding of fact" means the determination from proof or official notice of the existence of a fact.

"Hearing" means a proceeding conducted by a judge for the purpose of determining disputed issues of fact, law or disposition.

"Initial decision" means the administrative law judge's recommended findings of fact, conclusions of law and disposition, based upon the evidence and arguments presented during the course of the hearing and made a part of the record which is sent to the agency head for a final decision.

"Intervention" means the process by which a non-party may, by motion, obtain all rights and obligations of a party in a case.

"Judge" means an administrative law judge of the State of New Jersey or any other person authorized by law to preside over a hearing in a contested case unless the context clearly indicates otherwise. The term includes the agency head when presiding over a contested case under N.J.S.A. 52:14F-8(b).

"Jurisdiction" means the legal power to hear or decide a case.

"Material fact" means a fact legally consequential to a determination of an issue in the case.

"Mediation" means a proceeding in which an administrative law judge other than the judge assigned to preside over the hearing attempts to settle or compromise a dispute between opposing parties.

"Motion" means an application to a judge for a ruling or order.

"Participation" means the process by which a non-party may, by motion, be permitted to take limited part in a proceeding.

"Party" means any person or entity directly involved in a case, including a petitioner, appellant, complainant, respondent, intervenor, or State agency proceeding in any such capacity.

"Petitioner" means the party who is requesting relief or action at the hearing.

"Plenary hearing" means a complete and full proceeding conducted before a judge, providing the parties with discovery, the opportunity to present evidence, to give sworn testimony, to cross-examine witnesses and to make arguments.

"Prehearing conference" means a meeting that may be held in advance of the hearing between the judge, representatives of the parties and, sometimes, the parties to discuss and set out the issues to be decided in the case, how the case will be presented and any other special matters required by the judge to be discussed and resolved in advance of the hearing.

"Presumption" means a rebuttable assumption of fact resulting from a rule of law which requires such fact to be assumed from another fact or group of facts found or otherwise established in the contested case.

"Proceeding on the papers" means a summary proceeding conducted without any personal appearance or confrontation of the parties before the judge. The hearing is conducted through the submission of pleadings, affidavits, records or documents to the Office of Administrative Law for a decision by an administrative law judge.

"Proof" means all of the evidence before the judge relevant to a fact in issue which tends to prove the existence or nonexistence of such fact.

"Pro se" means when a person acts on his or her own behalf without an attorney or other qualified non-lawyer representative.

"Record" means all decisions and rulings of the judge and all of the testimony, documents and arguments presented before, during and after the hearing and accepted by the judge for consideration in the rendering of a decision. For purposes of further review, the record shall also include offers of proof and evidence that was ruled inadmissible.

"Relevant evidence" means evidence having any tendency in reason to prove any material fact.

"Respondent" means the party who answers or responds to the petitioner's request for relief or action.

"Service" means the delivery (by mail or in person) of a paper to a party or any other person or entity to whom the papers are required to be delivered.

"Settlement" means an agreement between parties which resolves disputed matters and ends all or part of the case.

"Settlement conference" means a proceeding during which the parties attempt to reach agreement upon as many matters as possible. When a settlement conference is scheduled by the Office of Administrative Law it may be conducted by the judge assigned to hear the case.

"Subpoena" means an official paper that requires a person to appear at a hearing to testify and/or bring documents.

"Telephone hearing" means a proceeding conducted by telephone conference call. It may be either a plenary or conference hearing.

"Uncontested case" means any hearing offered by an agency for reasons not requiring a contested case proceeding under the statutory definition of contested case.

"Withdrawal" means a decision by a party voluntarily relinquishing: (1) each request for action or relief, or (2) all defenses to a request for action or relief. It does not include settlements.

SUBCHAPTER [2] 3. COMMENCEMENT OF CONTESTED CASES; JURISDICTION OF THE OFFICE OF ADMINISTRATIVE LAW

[1:1-2.1] 1:1-3.1 Commencement of contested cases in the State agencies[; form]

A contested case shall be commenced in the State agency with appropriate subject matter jurisdiction. A contested case may be commenced by the agency itself or by an individual or entity as provided in the rules and regulations of the agency adopted in conformance with

the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., and subject to the requirements of N.J.A.C. [1:1-6.] 1:1-5.

**[1:1-2.2] 1:1-3.2 Jurisdiction of the Office of Administrative Law**

(a) The Office of Administrative Law shall acquire jurisdiction over a matter only after it has been determined to be a contested case by an agency head and has been filed [in] with the Office of Administrative Law or as otherwise authorized by law, except as provided by N.J.A.C. [1:1-14] 1:1-16.

(b) The Office of Administrative Law shall not receive, hear or consider any pleadings, motion papers, or documents of any kind relating to any matter until it has acquired jurisdiction over that matter, except as provided by N.J.A.C. [1:1-14] 1:1-16.

(c) Matters referred to the Office of Administrative Law that are more appropriately handled by administrative resolution without a contested case hearing shall be returned to the agency by the Clerk or judge unless the Director, Office of Administrative Law has approved a request for administrative assistance under N.J.S.A. 52:14F-5o, or N.J.A.C. 1:1-5.4(d). That a statute or constitutional principle may provide for a hearing shall not be dispositive of whether efforts at administrative resolution may be more appropriate than a contested case hearing in the particular circumstances.]

(c) **Matters involving the administration of the Office of Administrative Law as a state agency are subject to the authority of the Director. In the following matters as they relate to proceedings before the Office of Administrative Law, the Director is the agency head for purposes of review:**

1. Disqualification of a particular judge due to interest or any other reason which would preclude a fair and unbiased hearing pursuant to N.J.A.C. 1:1-13.13;

2. Appearances of non-lawyers, pursuant to N.J.A.C. 1:1-19.4;

3. Imposition of condition and limitations upon a non-lawyer appearing pursuant to N.J.A.C. 1:1-19.5;

4. Sanctions under N.J.A.C. 1:1-13.4 consisting of the assessment of costs or expenses; and

5. Disqualification of attorneys pursuant to N.J.A.C. 1:1-19.3.

**1:1-3.3 Return of transmitted cases**

(a) Upon notice to the parties, the Clerk and the judge, the transmitting agency may request that a previously transmitted case be returned. The notice shall state the reason for returning the case.

(b) If the request is made before the commencement of the evidentiary hearing, the Office of Administrative Law shall return the matter to the transmitting agency forthwith.

(c) If the request is made after the evidentiary hearing begins, the matter shall continue at the Office of Administrative Law.

**SUBCHAPTER 4. AGENCY RESPONSIBILITY BEFORE TRANSMISSION TO THE OFFICE OF ADMINISTRATIVE LAW**

[1:1-5.1 Determination of contest; filing; failure to join issue]

**1:1-4.1 Determination of contested case; notice when not contested**

(a) After an agency proceeding has [been] commenced, [and issue has been joined,] the agency head shall [forthwith] promptly determine whether the matter is a contested case. If [after issue has been joined,] any party petitions the agency head to decide whether the matter is contested, the agency shall make such a determination within [10] 30 days from receipt of the petition.

(b) When [the] an agency head determines that [the case] a matter is not contested, [it shall either file it forthwith with the Clerk of the Office of Administrative Law in the manner provided by N.J.A.C. 1:1-5.2 or retain it under the provisions of N.J.S.A. 52:14F-8 or N.J.A.C. 1:1-5.4 and notify all parties of the decision to retain.] the agency shall promptly issue a notice to the parties. The notice shall include a brief explanation as to why the matter is not a contested case, and as to what recourse, if any, is available through the agency for resolution of the matter.

(c) Agencies may transmit contested cases to the Office of Administrative Law prior to issue being joined only with the consent of the Director of the Office of Administrative Law. In those cases, if a party unreasonably delays joining issue, the administrative law judge may enter summary decision against the delaying party either sua sponte or upon motion of the aggrieved party. The summary decision shall be treated as an initial decision under N.J.A.C. 1:1-16.3.]

(c) **When a question arises whether a particular matter is a contested case, legal advice should be obtained from the Attorney General's office.**

**1:1-4.2 Settlement by agencies prior to transmittal to the Office of Administrative Law**

An agency may, under N.J.A.C 1:1-7.1, attempt settlement prior to

transmitting the matter to the Office of Administrative Law. The settlement efforts may be conducted in any manner an agency believes may be appropriate and productive. To conduct this settlement, an agency may utilize its own personnel or may request in writing the services of an administrative law judge. All such requests shall be granted by the Director of the Office of Administrative Law unless the Director states in writing why a particular request cannot be honored. An administrative law judge who conducts settlement efforts at the request of an agency will not thereafter be assigned to hear the case if settlement efforts are unsuccessful.

**SUBCHAPTER [6.] 5. [FIRST PLEADING] PLEADINGS**

[1:1-6.1] 1:1-5.1 Form of first pleading; contents

(a) Except as otherwise provided by this subchapter, parties in contested cases should refer to the rules of the particular agency with subject matter jurisdiction for guidance as to specific pleading requirements. The first pleading in a contested case may be in the form of a petition, complaint, an order to show cause, a notice of action or proposed action, or in [any] such other form permitted by the agency's rules [and regulations. The first pleading shall be one of the initial papers provided in N.J.A.C. 1:1-5.3].

(b) The first pleading shall be addressed to a specific party or parties[, shall satisfy the service requirements of N.J.A.C. 1:1-7.1,] and shall contain:

1. A statement of the legal authority and jurisdiction under which the [hearing or action to be taken] agency action has been or will be taken or under which the hearing is to be held;

2. A reference to the particular sections of the statutes and rules involved;

3. A short and plain statement of the matters of fact and law asserted[; and]. If the party is unable to state matters in detail at the time the notice is served, the first pleading may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished. N.J.S.A. 52:14B-9;

4. Notification of the party's right to a hearing and responsibility to request a hearing, if the agency places responsibility for requesting a hearing on any party;

[4.] 5. Any other information required by concepts of fairness and justice [before a party can be bound.] to apprise a party of the matters of fact and law asserted and issues raised; and

6. Notice of any other matters which may have been commenced by the party with another agency involving the same or similar facts, giving the name of the agency, date of filing and docket number, if known.

[1:1-6.2] 1:1-5.2 First pleading [requirement] requirements

Every contested case must have a [paper] document that conforms [with] to the [first pleading requirements of] form and content requirements for first pleadings set forth in N.J.A.C. [1:1-6.1.] 1:1-5.1, however, the [paper] document need not [have been] be the first document prepared or served in the case or the document that generates the proceedings. The first pleading shall satisfy the service requirements of N.J.A.C. 1:1-6.1 and shall be attached to the agency's completed transmittal form pursuant to N.J.A.C. 1:1-7.2.

[1:1-6.3] 1:1-5.3 Amendment of [first pleading] pleadings

(a) [The first pleading] Unless precluded by law or constitutional principle, pleadings may be [amended at any time, either before or after the presentation of proofs] freely amended when, in the judge's discretion, [an amendment neither imposes an unreasonable burden nor is precluded by statute or constitutional principle.] an amendment would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice.

(b) A judge in granting [first] pleading amendments may permit a brief continuance to allow an opposing party additional preparation time.

(c) When a matter is begun by a party contesting a state agency's rejection of a party's application or petition and where a party objects at the hearing or prehearing to the admission of proofs which do not conform to the application or pleadings, the contesting party may move to amend the application or pleading to add a new contention, claim or defense not previously considered by the state agency.

1. The contesting party shall file with the Clerk and serve on the parties the proposed amendment to the application or pleadings.

2. If considerations of expediency and efficiency require that the matter be returned to the state agency, the judge shall order the pending matter returned to the state agency. If the matter as amended is thereafter transmitted for hearing, the agency's response to the new contention, claim or defense shall be attached to the transmittal form required by N.J.A.C. 1:1-7.2.

[1:1-3.11] **1:1-5.4** Public officers; death or separation from office

When any public officer who is a party to a contested case, whether or not [his name is] mentioned **by name in the pleadings**, dies, resigns or for any reason ceases to hold office, his **or her** successor in office shall be deemed to have been substituted in his **or her** place. However, on motion, the judge may otherwise order or may specifically order the [substitution] **retention as a party** of the [successor] **predecessor** in office.

SUBCHAPTER [7.] **6. SERVICE AND FILING OF PAPERS;****FORMAT**[1:1-7.1] **1:1-6.1** Service; when required; manner; proof

(a) Service of the first pleading in a contested case shall be made in person; or by certified mail, return receipt requested; or by ordinary mail; or in any manner which is designed to provide actual notice to the party or parties to be substantially, specifically and directly affected thereby, and to any other person or persons provided in the rules and regulations of the agency.

(b) All subsequent papers filed shall be served in the manner provided by (a) above upon all attorneys **or other representatives** of record in a proceeding and upon all parties appearing pro se.

(c) Where necessary to prove service, proof may be made by an acknowledgment of service signed by the attorney, **any other representative** or party, or by an affidavit of the person making service, or by a certificate of service appended to the paper to be filed and signed by the attorney **or other representative** for the party making service. Where appropriate, other competent proof that actual and timely notice existed of the contents of the paper may be considered as a substitute for service.

(d) Service by mail of any paper referred to in (b) above shall be complete upon mailing.

(e) The standards of personal service contained in R.4:4-4 of the New Jersey Court Rules shall apply to contested cases when personal service is required and this section is inapplicable.

[1:1-7.2] **1:1-6.2** Filing; proof of publication and service; what constitutes filing; **copies**

(a) All papers required to be served by N.J.A.C. [1:1-7.1] **1:1-6.1** shall be filed either before service or promptly thereafter unless otherwise provided by order. Whenever these rules or the applicable rules of any agency provide for publication, mailing or posting of public notices in contested cases, proofs thereof shall be filed within 20 days after the publication, mailing or posting.

(b) A paper [shall be considered] **may be filed** [if the original or a clear copy is filed] with **either** the Clerk or [with] the judge assigned to the case. Evidence of filing shall be a notation showing the date, time and place of filing. When a paper is filed with a judge, the notation shall also identify the judge; and]. **A copy** of such papers shall be forwarded **by the filing party** to the Clerk forthwith.

(c) Except for service by publication or as otherwise required [in] by this chapter **or by state or federal statute**, proof of service shall not be necessary unless a question of notice arises.

(d) [Subject to the requirement of 1:1-2.2 N.J.A.C. the Clerk shall file all papers presented for filing, and may notify the person filing if such papers do not conform to this chapter.] **The Clerk or the judge, upon receiving papers for filing that do not conform to the requirements of these rules, may either return the papers with instructions for refiling or cure the defects and accept the papers for filing.**

(e) **All papers filed with the Office of Administrative Law shall be in duplicate.**

(f) **If the filer submits an extra copy of the paper to be filed with a self-addressed, stamped envelope, the Clerk will return the paper to the filer marked with the date of filing.**

**1:1-6.3** Format of papers

(a) **Every paper filed after the case is transmitted shall contain:**

**1. The Office of Administrative Law docket number of the proceeding in the upper right hand portion;**

**2. The name, address and telephone number of the person who prepared the paper in the upper left hand portion; and**

**3. A caption setting forth the title of the proceeding and a brief designation describing the paper filed.**

(b) **All papers shall be on 8½" x 11" stock of customary weight and quality insofar as is practicable.**

SUBCHAPTER [5.] **7. FILING AND TRANSMISSION OF CONTESTED CASES IN THE OFFICE OF ADMINISTRATIVE LAW[; FORMAT OF PAPERS]****1:1-7.1** Agency filing with the Office of Administrative Law; settlement efforts

(a) **After the parties have complied with all pleading requirements, the agency shall within 30 days either file the case with the Clerk of the Office of Administrative Law in the manner provided by N.J.A.C. 1:1-7.2 or retain it under the provisions of N.J.S.A. 52:14F-8 and notify all parties of the decision to retain.**

(b) **During the 30-day period in (a) above, an agency may attempt settlement pursuant to N.J.A.C. 1:1-4.2. At the conclusion of the 30-day period, unless all parties agree to continue the settlement efforts, the matter shall be either filed with the Office of Administrative Law or further retained under the provisions of N.J.S.A. 52:14F-8. After the thirtieth day of an agency's settlement efforts, any party may request that the agency transmit the matter to the Office of Administrative Law, provided that the agency does not intend to retain the case under N.J.S.A. 52:14F-8.**

(c) **An agency may file a contested case with the Office of Administrative Law immediately if the agency:**

**1. On the transmittal form, requests settlement efforts by the Office of Administrative Law; or**

**2. Determines that settlement efforts would be inappropriate or unproductive.**

[1:1-5.2] **1:1-7.2** Transmission of contested cases to the Office of Administrative Law; [service on parties; receipt by the Office of Administrative Law] **request for mediation**

(a) In every proceeding to be filed in the Office of Administrative Law, the agency shall affix [to the initial papers] a completed transmittal form, furnished by the Clerk of the Office of Administrative Law, containing the following information:

1. The name of the agency transmitting the case;
2. The name, address and telephone number of the agency's transmitting officer;
3. The name or title of the proceeding, **including the designation petitioner/respondent or appellant/appellee when appropriate;**
4. The agency docket or reference number;
5. A brief statement or description of the nature of the case, **including whether the case is a remand;**

6. A statement [that the case is transmitted either before or after attempting administrative resolution;] **requesting mediation by the Office of Administrative Law, or explaining that the agency has already attempted settlement, or that such efforts would be inappropriate or unproductive;**

7. An estimate of the total time required for the hearing;

[8. Whether there are special legal requirements (State or Federal) mandating deviations from any Uniform Administrative Procedure Rule, such as the date for final decision;

9. Whether there are any special legal requirements or requests governing notice or the location of hearing;

10. Whether there are any special legal requirements or requests concerning stenographic recording of proceedings;

11. An estimate of the time needed by the agency and the parties to prepare for hearing;]

**8. Whether a court stenographer is requested. If a stenographer is not requested, the Office of Administrative Law may provide at its expense either an audiotape recording or a court stenographer for the hearing. When a stenographer is requested by the transmitting agency for its own purposes, the appearance fee shall be paid by the transmitting agency. When the transmitting agency notifies the Clerk that a court stenographer is required because a party so requests, the appearance fee shall be paid by that party. When any party to the case is entitled by law to recover the cost of a court stenographer from others, the requesting agency shall not be required to pay the appearance fee;**

[12.] **9. Anticipated special features or requirements including the need for emergent relief, [the need for a pre-hearing conference,] discovery [needs,] and motions;**

[13.] **10. The names and addresses of all parties and their attorneys or other representatives [to the fullest extent known, including the agency representative if the agency is a party];**

**11. A request for a barrier-free hearing location if it is known that a handicapped person will be present;**

[14.] **12. The names of any other agencies claiming jurisdiction over either the entire or any portion of the factual dispute presented in the transmitted contested case; and**

13. Whether a prehearing conference or a conference hearing is requested.

(b) The agency shall affix to the completed transmittal form all documents such as pleadings, notices and motions exchanged between the parties prior to transmission of the case to the Office of Administrative Law. If the agency affixes to the transmittal form other documents that have not been exchanged between the parties, the agency shall either serve these documents upon the parties or offer them to the parties and shall inform the Clerk of such action in the transmittal form.

[(e)] (c) If an agency has transmitted a case to the Office of Administrative Law, any party or agency aware that another agency is claiming jurisdiction over any part of the transmitted case shall immediately notify the Office of Administrative Law, the other parties and affected agencies of the second jurisdictional claim.

[(b)] (d) The completed transmittal form and [all initial papers are defined in N.J.A.C. 1:1-5.3] any attachments shall be filed with the Clerk of the Office of Administrative Law.

[(c)] (e) The Clerk shall mark each transmitted contested case as having been received and filed; a docket number shall be assigned forthwith.

(d) The Clerk shall notify the transmitting office and all parties of the case's filing date and the docket number assigned by the Office of Administrative Law.]

#### [1:1-5.3 Definition of initial papers

Initial papers include all documents similar to pleadings, notices and motions exchanged between the parties prior to transmission of the case to the Office of Administrative Law. They shall not include papers such as investigative report and evidentiary matters that have not been served upon the parties and that therefore would be improper for an impartial and independent trier of fact to review prior to hearing.]

#### [1:1-5.4 Administrative resolution: Office of Administrative Law participation; time limit

(a) After a contested case has been commenced in an agency, the agency shall make a prompt settlement attempt by applying administrative procedures including informal or summary proceedings, meetings, and conferences unless such attempts would be inappropriate or unproductive.

(b) In no event shall administrative resolution efforts continue beyond 30 days from the date the contested case commenced and issued was joined in the agency, unless this time limit is extended by agreement of all the parties.

(c) After completing administrative resolution efforts in a contested case or after expiration of the time provided in (b) above, whichever occurs first, the matter shall be filed forthwith with the Clerk of the Office of Administrative Law.

(d) The agency head may request that the Director of the Office of Administrative Law assign a judge or other personnel to conduct or assist in any administrative resolution proceedings.]

#### [1:1-5.5 Format of papers; copies

(a) Every paper filed after the transmittal form and the initial papers shall contain:

1. The Office of Administrative Law docket number of the proceeding in the upper right hand portion;
2. The name, address and telephone number of the person who prepared the paper in the upper left hand portion; and
3. A caption setting forth the title of the proceeding and a brief designation describing the paper filed.

(b) All papers shall be on 8½" x 11" stock of customary weight and quality insofar as is practicable.

(c) All papers filed with the Office of Administrative Law shall be in duplicate.

(d) Unless otherwise required by this chapter, the requirements of R.1:4-1 through R.1:4-9 of the New Jersey Court Rules (Form and Execution of Papers) shall apply. Format rules may be relaxed as is reasonable and necessary for the benefit of parties appearing pro se or with non-lawyer representatives.]

#### 1:1-7.3 Receipt by Office of Administrative Law of transmitted contested case; filing; return of improperly transmitted cases

(a) Upon receipt of a properly transmitted contested case the Clerk shall mark the case as having been received and filed as of a particular date and time. Upon filing, the Clerk shall assign an Office of Administrative Law docket number to the contested case.

(b) The Clerk upon receiving a contested case that has not been transmitted in accordance with this subchapter may either return the case with instructions to the agency for retransmission or cure the transmission defects and accept the matter for filing.

## SUBCHAPTER 8. SCHEDULING; CLERK'S NOTICES; [AND CONDUCT OF PROCEEDINGS GENERALLY; FIRST NOTICE OF HEARING OR PRE-HEARING CONFERENCE; SUBPOENAS] AD-JOURNMENTS; INACTIVE LIST

1:1-8.1 Scheduling of proceedings[: Clerk's function, judge's function] ; order to show cause process

(a) When a contested case is filed, the Clerk shall [mark the papers accordingly and shall expeditiously] determine whether the matters should be scheduled [set down] for [a] mediation, a settlement conference, a pre[-]hearing conference, [an evidentiary hearing or another type of proceeding. The Clerk may consult with a judge in making this determination. The case shall then be assigned to a judge who shall review the file and determine how the matter can best be conducted on the scheduled date or dates, communicating further with the parties if necessary. Except in cases of genuine, emergent need, the scheduled date or dates shall not be adjourned. If additional days are needed to conclude the proceeding, the judge shall establish an expedited schedule and peremptory dates.] a proceeding on the papers, a conference hearing, a telephone hearing, a plenary hearing or other proceeding.

[(b) Applications for adjournments, whether consented or not, shall be made to the Clerk until such time as the parties shall have personally appeared before a judge. Thereafter, applications for adjournments shall be made to the judge.]

(b) To schedule a proceeding, the Clerk may contact the parties to arrange a convenient date, time and place or may prepare and serve notice without first contacting the parties. Proceedings shall be scheduled for suitable locations, taking into consideration the convenience of the witnesses and the parties, as well as the nature of the case and proceedings.

(c) The Clerk may schedule a settlement conference whenever such a proceeding may be appropriate and productive. The Clerk may schedule mediation whenever all parties concur.

(d) A prehearing conference may be scheduled in any case other than a conference hearing whenever necessary to foster an expeditious proceeding and where:

1. The issues are unusually complex, numerous or novel; or
2. The case is expected to require two or more hearing days; or
3. Any party to the case requests a prehearing.

(e) A proceeding on the papers may be scheduled in accordance with N.J.A.C. 1:1-13.8 for:

1. Division of Motor Vehicle cases dealing with excessive points and surcharges, pursuant to N.J.A.C. 1:13-1.1 et seq.;
2. Department of Environmental Protection cases involving emergency water supply allocation plan exemptions, pursuant to N.J.A.C. 1:7-1.1 et seq.; and
3. Any other class of suitable cases which the Director of the Office of Administrative Law and the transmitting agency agree could be lawfully decided on the papers.

(f) A conference hearing may be scheduled for:

1. Civil Service cases dealing with layoffs, disciplinary actions and termination after probationary work period;
2. Division of Public Welfare cases where an applicant or recipient disputes the proposed action on eligibility or benefits entitlement by a county welfare agency or a local decision or inaction by a municipal welfare department;
3. Food stamp intentional program violations;
4. Matters arising out of the Special Education Program of the Department of Education;
5. Any case when all parties agree and the judge so directs; and
6. Any other class of cases which the Director of the Office of Administrative Law and the transmitting agency agree would be suitable to be heard as conference hearings.

(g) A telephone hearing may be scheduled for any case when all parties agree and the judge so directs.

(h) A plenary hearing may be scheduled in all cases not mentioned in (e), (f) and (g) above.

(i) When an agency head commences an action by order to show cause, the agency head may, prior to service and filing of the order to show cause, contact the Clerk who will assign a judge and establish the time, place and date for a hearing on the matter. The agency shall insert in the pleading the information provided by the Clerk and promptly serve and file it in accordance with N.J.A.C. 1:1-6.1 et seq.

#### 1:1-8.2 Expedited Scheduling and Proceedings

(a) Priority in scheduling shall be given where requirements of law impose accelerated time frames for disposition of a case.

(b) In all other matters, upon written request to the Clerk, with copies to all parties, any party may apply for expedited processing of a case. The request must state the reason for expediting the case.

(c) If the transmitting agency is a party and the agency either requests expedition or concurs in a request for expedition, the agency will be deemed to have agreed to abide by the 15-day decision deadline in (d)7 below. If the transmitting agency is not a party, the party requesting expedition must secure from the transmitting agency agreement to render its final decision within 15 days as provided in (d)7 below.

(d) If a judge finds that there is good cause for expediting the proceedings, the judge shall schedule an accelerated hearing date and the case shall proceed in the following matter:

1. Formal discovery shall not be permitted, although parties may voluntarily exchange information, provided it does not delay the accelerated disposition of the case.

2. No mediation, prehearing conference or settlement conference shall be scheduled or conducted unless directed by the presiding judge.

3. Except for extraordinary circumstances establishing good cause no adjournments shall be granted.

4. Prehearing motions shall not be permitted unless requested by the presiding judge.

5. Post-hearing submissions shall not be accepted except for the purpose of expressing the terms of a settlement or when requested by the presiding judge.

6. Initial decisions shall be issued within 15 days after the hearing is concluded.

7. Final decisions shall be entered within 15 days after the receipt of the initial decision.

[1:1-8.2] 1:1-8.3 [Notice of proceeding; abandonment]  
Clerk's notices

(a) After filing, the Clerk shall prepare a notice of hearing, pre-hearing conference, or other proceeding and shall serve the same in a manner authorized by N.J.A.C. 1:1-7(a) to all parties. The notice shall fairly apprise the parties of the date, time, place, and nature of the proceeding.

(b) All parties shall be afforded timely and adequate notice of any hearing or other proceeding, consistent with the requirements of statutes, regulations and due process of law. In emergent circumstances, where the public interest is endangered or the need is great, five days notice or a shorter period established by statute, order, or agreement of the parties shall be deemed to be timely and adequate.]

(a) Upon acceptance of a contested case for filing, the Clerk shall notify the transmitting agency and all parties of the case's filing date and the Office of Administrative Law docket number. This notice shall include a description of the nature of the proceeding, a reference number to the controlling hearing procedures, including discovery, and a reference to the right of persons to represent themselves or to be represented by any attorney or qualified non-lawyer in certain situations. The Clerk may also include in this notice any information he or she deems instructive or helpful to the parties and may combine this notice with any other notice, including the notice of hearing.

(b) The Clerk shall provide all parties with timely notice of any mediation, settlement, prehearing conference, proceeding on the papers, conference hearing, telephone hearing, plenary hearing or other proceeding, except that in emergency relief proceedings pursuant to N.J.A.C. 1:1-11.6 the Clerk may require the moving party to provide appropriate notice. Each notice shall apprise the parties of the presiding judge and the date, time and place of the proceeding. The Clerk may also include in any proceeding notice any information he or she deems instructive or helpful to the parties.

(c) Notice shall be by regular mail, except that when emergent needs so require and the law permits, notice of proceedings may be by telegram, mailgram or telephone. Telephone notice shall be confirmed promptly in writing.

(d) All Clerk's notices shall be written in plain language. See generally, N.J.S.A. 56:12-1 et seq.

(e) Each notice shall prominently display a telephone number where parties can obtain further assistance.

(f) [(c)] All parties shall receive subsequent notices of all proceedings in any contested case. Subsequent notices shall [fairly] apprise the parties of the date, time, place and nature of a proceeding and may either be written or effected by a statement made on the record.

[(d)] In all contested cases initiated by a person's request for a hearing, if neither the person requesting the hearing nor a representative appears at the time and place established for the hearing, a reasonable effort shall be made to determine whether the hearing request has been abandoned. Unless precluded by statute or regulation, the judge in the event of an abandonment shall prepare an order of dismissal explaining the failure to appear, which order shall be processed as an initial decision in the manner authorized by N.J.A.C. 1:1-16.3.]

[1:1-8.3 Subpoenas: service; motion to quash

(a) Subpoenas may be issued either by the Clerk or any judge. A subpoena shall state the title of the case, the party who has requested the subpoena and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein.

(b) A subpoena shall be served by the requesting party at a reasonable time in advance of hearing either in person or by certified mail return receipt requested.

(c) The judge on motion made promptly may quash or modify any subpoena for good cause shown.]

[1:1-8.4 Subpoenas for production of documentary evidence; motions to quash

A subpoena may require production of books, papers, documents or other objects designated therein, but a subpoena shall not be used as a discovery device in place of discovery procedures otherwise available under this chapter, nor as a means of avoiding discovery deadlines established by this chapter or by the judge in a particular case. The judge on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive and may condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the objects subpoenaed. The judge may direct that the objects designated in the subpoena be produced before the judge at a time prior to the hearing or prior to the time when they are to be offered in evidence and may upon their production permit them or portions of them to be inspected by the parties and their attorneys.]

[1:1-8.5 Subpoena fees; forms; enforcement

(a) The fees for witnesses required to attend shall be at the same rates as are prescribed by law for attendance under subpoena in the Superior Court of the State and shall be paid by the requesting party.

(b) Subpoena forms shall be available free of charge at the Office of Administrative Law.

(c) Any subpoena may be enforced by an action in the Superior Court in aid of the jurisdiction of the Office of Administrative Law and the agency which generated the contested case.

(d) A party who refuses to obey a subpoena after having been ordered to do so by a judge may be subject to sanction under N.J.A.C. 1:1-3.5 or may suffer an inference that the documentary or physical evidence or testimony that the party fails to produce is unfavorable.]

1:1-8.4 Adjournments

(a) Applications for adjournments shall be made to the Clerk until such time as a party has appeared before the judge in person, by telephone or in writing for a motion, prehearing or hearing. Thereafter, applications for adjournments shall be made to the judge. Applications may be made in writing or by telephone; telephone applications for adjournments which are granted must be confirmed in writing by the party requesting the adjournment. All adjournments that are granted will be granted for the shortest period possible and to a definite date.

(b) Adjournments will be granted only in exceptional situations which could not have been reasonably foreseen or prevented.

(c) Adjournments will not be granted to complete discovery if parties have not timely complied with N.J.A.C. 1:1-9.4(b).

(d) The fact that a party obtains the consent to an adjournment of his or her adversary will not always result in the granting of the adjournment.

(e) An attorney with a conflicting engagement in a court shall call the Clerk or judge as soon as the conflict is discovered. Attorneys should not assume that such conflicts will always result in an adjournment.

(f) When the judge or the Clerk requests, a party obtaining an adjournment will be responsible for securing from his or her adversary consent to a new date.

(g) All parties to an adjournment will be responsible for giving prompt notice to their witnesses as to the adjournment and the new scheduled date. The Clerk shall confirm the new date with a subsequent notice mailed to the parties.

(h) When granting an adjournment after an untimely application, a judge may order any of the sanctions contained in N.J.A.C. 1:1-13.4(a).]

1:1-8.5 Inactive list

(a) Where a party to a pending case is mentally or physically incapable of proceeding or is with other just excuse unable to proceed without substantial inconvenience or inordinate expense, that party or his or her representative may move to place the case on the inactive list. A judge, as a condition to placing a matter on the inactive list, shall consider the public interest in the matter and may impose conditions appropriate to the case.

1. Upon affidavit or other adequate proof, the judge may determine to place the case on the inactive list for as brief a period as possible not to exceed six months.

2. The Clerk shall maintain the inactive list and shall return the case to an active status after the specified period has expired unless, upon motion and further proof, the judge determines that the party is still with just excuse unable to proceed.

3. A judge may order a case to continue on the inactive list for successive brief periods, each not to exceed six months.

4. The Clerk shall notify all parties and the agency of any action taken under this section.

(b) Cases may not be placed on the inactive list to await an appellate court decision involving other parties unless the appellate decision is so imminent and directly relevant to the matter under dispute that some reasonable delay would be justified.

## SUBCHAPTER [11.] 9. DISCOVERY

[1:1-11.1 Policy considerations governing discovery]

### 1:1-9.1 Purpose and function; policy considerations; public documents not discoverable

[(a) Discovery methods are means designed to assist parties in preparing to meet their responsibilities and protect their rights during hearings without unduly delaying, burdening or complicating the hearings process and with due regard to the rights and responsibilities of other parties and persons affected. Accordingly, parties are obliged to exhaust all less formal opportunities to obtain discoverable material before utilizing this subchapter.]

(a) The purpose of this subchapter is to facilitate the disposition of cases by streamlining the hearing and enhancing the likelihood of settlement or withdrawal. The rules are designed to achieve this purpose by giving litigants access to facts which tend to support or undermine their position or that of their adversary.

(b) It is not ground for denial of a request for discovery that the information to be produced may be inadmissible in evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) In considering a discovery motion, the judge shall weigh the specific need for the information, the extent to which the information is within the control of the party and matters of expense, privilege, trade secret and oppressiveness. Except where so proceeding would be unduly prejudicial to the party seeking discovery, discovery shall be ordered on terms least burdensome to the party from whom discovery is sought.

[(b)] (d) Public documents accessible under legislative authorization shall not be discoverable under this subchapter, except for good cause shown. A party [need only] shall exhaust administrative remedies to obtain public documents before seeking discovery under this subchapter [for good cause].

[(c)] (e) Discovery shall generally not be available against a State agency that is neither a party to the proceeding nor asserting a position in respect of the outcome but is solely providing the forum for the dispute's resolution.

[(d) It is not ground for denial of a request of discovery that the information to be produced may be inadmissible in evidence at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(e) When discovery by notice is permitted, the notice seeking discovery need not be filed with the Clerk, but shall be served upon all parties.]

### [1:1-11.2 Methods available on notice; relief from discovery; enforcement of discovery notices; privilege]

[(a) Subject to the limitations of N.J.A.C. 1:1-11.1(a), (b) and (c), any party in a contested case by notice may obtain discovery by one or more of the following methods:

1. Written interrogatories;
2. Production of documents or things;
3. Permission to enter upon land or other property for inspection and other purposes;
4. Physical and mental examinations; and
5. Request for admissions.

(b) Any party or person affected by a notice for discovery pursuant to (a) above may apply on motion for relief from such request, or for an order enforcing such request. In considering a discovery motion the judge shall weigh the specific need for the information; its relevance and materiality; the extent to which the information is within the control of the party; undue hardship; and matters of expense, privilege, trade secret and oppressiveness.]

### [1:1-11.3 Depositions limited; time limits

(a) Depositions upon oral examination or written questions are available only on motion for good cause shown served upon all parties in

the manner prescribed by N.J.A.C. 1:1-7.1(a). In deciding any such motion, the judge shall consider the policy governing discovery (N.J.A.C. 1:1-11.1) and shall weigh the specific need for the deposition; the extent to which the information sought cannot be obtained in other ways; the requested location and time for the deposition; undue hardship; and matters of expense, privilege, trade secret or oppressiveness.

(b) An order granting depositions shall specify a reasonable time period during which the deposition shall be concluded.]

### 1:1-9.2 Discovery by notice or motion; relief from discovery; service requirements

(a) Any party may obtain discovery from another party by notice by one or more of the following methods:

1. Written interrogatories;
2. Production of documents or things;
3. Permission to enter upon land or other property for inspection or other purposes; and
4. Requests for admissions.

(b) Any party may request an informal, nontranscribed meeting with witnesses for another party in order to facilitate the purposes of discovery as described in N.J.A.C. 1:1-9.1(a). The other party and his or her representative must be given notice and the opportunity to be present. Such meetings are voluntary and cannot be compelled. Failure to agree to such meetings will not be considered good cause for permitting depositions pursuant to (c) below.

(c) Depositions upon oral examination or written questions and physical and mental examinations are available only on motion for good cause. In deciding any such motion, the judge shall consider the policy governing discovery (N.J.A.C. 1:1-9.1) and shall weigh the specific need for the deposition; the extent to which the information sought cannot be obtained in other ways; the requested location and time for the deposition; undue hardship; and matters of expense, privilege, trade secret or oppressiveness. An order granting a deposition or an examination shall specify a reasonable time during which the deposition or examination shall be concluded.

(d) A party taking a deposition who orders a transcript shall promptly, without charge, furnish a copy of the transcript to the witness deposed, if an adverse party, and, if not, to any adverse party. The copy so furnished shall be made available to all other parties for their inspection and copying.

### [1:1-11.4] 1:1-9.3 Costs of discovery

(a) The [proponent of any notice or motion for] party seeking discovery shall pay for all reasonable expenses [and costs] caused by the discovery request.

[(b) A party taking a deposition shall pay for the proceeding and shall at his or her expense promptly furnish a copy of the transcript to the witnesses deposed, if an adverse party, and if not, to any adverse party. The copy so furnished shall be made available to all other parties for their inspection and copying.]

[(c)] (b) Where a proponent of any notice or motion for discovery or a party taking a deposition is a State agency [authorized by law to represent the public interest in a contested case], and the party or person from whom such discovery or deposition is sought is entitled by law to recover in connection with such [contested] case the costs thereof from others, such State agency shall not be required to pay the cost of such discovery or deposition.

### [1:1-11.5] 1:1-9.4 Time for discovery

(a) The parties in any contested case shall commence immediately to exchange information voluntarily, to seek access as provided by law to public documents and to exhaust other informal means of obtaining discoverable material.

[(b) Discovery motions shall comply with the time limits specified in N.J.A.C. 1:1-9.2.

(c) The parties shall complete all discovery no later than the first day of evidentiary hearing, as established by the Clerk or judge pursuant to N.J.A.C. 1:1-8.1 or 8.2.

(d) Upon motion of a party and for good cause shown, the judge may shorten or lengthen the period for discovery and adjust hearing dates accordingly. Where necessary, the judge may permit discovery during the pendency of a hearing.

(e) When the formal means of discovery provided in N.J.A.C. 1:1-11.2 and 11.3 are necessary, the parties shall serve discovery notices and make discovery motions with reasonable expedition.

(f) No later than 15 days from receipt of a notice requesting discovery, the receiving party either shall move for relief from the request, shall provide the requested information, material or access, or shall offer a schedule for reasonable compliance with the request.]

(b) Parties shall immediately serve discovery requests and notices and make discovery motions.

(c) No later than 15 days from receipt of a notice requesting discovery, the receiving party shall provide the requested information, material or access or offer a schedule for reasonable compliance with the notice.

(d) A party who wishes to object to a discovery notice shall place a telephone conference call to the judge and the other parties within 10 days from receipt of the notice. A party who wishes to compel a response to a discovery notice shall place a telephone conference call to the judge and the other parties within 10 days of the notice due date. A party who wishes to object to a discovery response shall place a telephone conference call to the judge and the other parties within 10 days of receiving the response. If a party fails without good reason to place a timely telephone call, the judge may deny that party's objection or decline to compel the discovery.

(e) The parties shall complete all discovery no later than five days before the first scheduled evidentiary hearing or by such date ordered by the judge at the prehearing conference.

#### 1:1-9.5 Sanctions

Where circumstances warrant sanctions, the judge shall, after providing an opportunity to be heard, consider sanctions under 1:1-13.4 against the person whose conduct necessitated the telephone conference call or other compliance seeking action.

#### [1:1-11.6 Sanctions for discovery abuses

(a) If a motion compelling discovery is granted and the circumstances warrant sanctions, the judge shall, after providing an opportunity to be heard, consider sanctions under N.J.A.C. 1:1-3.5 against the person whose conduct necessitated the motion.

1. If the motion is denied and circumstances warrant sanctions, the judge shall, after providing an opportunity to be heard, consider sanctions under N.J.A.C. 1:1-3.5 against the movant.

2. If the motion is granted in part and denied in part the judge may apportion sanctions as the circumstances may warrant.

(b) Refusal, without just cause, to obey an order compelling discovery shall be considered obstructive behavior under N.J.A.C. 1:1-3.5(c).]

#### [1:1-11.7 Other standards governing discovery

Unless in conflict with this subchapter and subject to the discretion of the judge, the standards governing discovery and motions pertaining thereto shall be those embodied in R.4:10 through R.4:19, R.4:22 and R.4:23 of the New Jersey Court Rules.]

#### 1:1-9.6 Discovery in conference hearings; no discovery in mediation

(a) If an agency or a county/local government entity is a party to a conference hearing and the subject of the case is the county/local entity's or agency's action, proposed action or refusal to act, a party shall be permitted to review the entity's or agency's relevant file or files on the matter. Copies of any document in the file or files shall be provided to the party upon the party's request and for a reasonable copying charge. See, N.J.S.A. 47:1A-2. The agency or county/local entity may refuse to disclose any document subject to a bona fide claim of privilege.

(b) If the subject of a conference hearing is not a county/local entity's or agency's action, proposed action or refusal to act, each party shall provide each other party copies of any documents and a list with names, addresses and telephone numbers of any witnesses including experts which the party intends to introduce at the hearing. A summary of the testimony expected to be provided by each witness shall be included. These items shall be exchanged at least five days prior to the hearing, unless the judge determines that the information could not reasonably have been disclosed within that time.

(c) Any discovery other than that permitted in (a) and (b) above in conference hearings shall be by motion to the judge and for good cause shown.

(d) In no conference case shall the hearing date be adjourned to permit discovery.

(e) No discovery to prepare for mediation shall be permitted.

### SUBCHAPTER 10. SUBPOENAS

#### 1:1-10.1 Subpoenas for attendance of witnesses; production of documentary evidence; issuance; contents

(a) Subpoenas may be issued by the Clerk or any judge or by an attorney in the name of the Clerk to compel the attendance of a person to testify at a hearing or a deposition. The subpoena shall contain the title and docket number of the case, the name of the person to whom it has been issued, the time and place at which the person subpoenaed must appear, the name and telephone number of the party who has requested the subpoena and a statement that all inquiries concerning the subpoena should be directed to the requesting party. The subpoena shall command the person to whom it is directed to attend and give testimony or to produce books, papers, docu-

ments or other designated objects at the time and place specified therein and on any continued dates.

(b) A subpoena which requires production of books, papers, documents or other objects designated therein shall not be used as a discovery device in place of discovery procedures otherwise available under this chapter, nor as a means of avoiding discovery deadlines established by this chapter or by the judge in a particular case.

(c) Subpoena forms shall be available free of charge from the Office of Administrative Law.

#### 1:1-10.2 Service; fees

(a) A subpoena shall be served by the requesting party by delivering a copy either in person or by certified mail return receipt requested to the person named in the subpoena, together with the appropriate fee, at a reasonable time in advance of the hearing.

(b) Witnesses required to attend shall be entitled to payment by the requesting party at a rate of \$2.00 per day of attendance if the witness is a resident of the county in which the hearing is held and an additional allowance of \$2.00 for every 30 miles of travel in going to the place of hearing from his or her residence and in returning if the witness is not a resident of the county in which the hearing is held.

#### 1:1-10.3 Motions to quash

The judge on motion may quash or modify any subpoena for good cause shown. If compliance with a subpoena for the production of documentary evidence would be unreasonable or oppressive, the judge may condition denial of the motion upon the advancement by the requesting party of the reasonable cost of producing the objects subpoenaed. The judge may direct that the objects designated in the subpoena be produced before the judge at a time prior to the hearing or prior to the time when they are to be offered in evidence and may upon their production permit them or portions of them to be inspected by the parties and their attorneys.

#### 1:1-10.4 Failure to obey subpoena

A party who refuses to obey a subpoena may be subject to sanction under N.J.A.C. 1:1-13.4 or may suffer an inference that the documentary evidence or physical evidence or testimony that the party fails to produce is unfavorable.

#### 1:1-10.5 Enforcement

A party who has requested issuance of a subpoena may seek enforcement of the subpoena by bringing an action in the Superior Court pursuant to the New Jersey Court Rules.

### SUBCHAPTER [9.] 11. MOTIONS

#### [1:1-9.1] 1:1-11.1 When and how made; generally; limitation in conference hearings

(a) Where a party seeks an order of a judge, the party shall apply by motion[, or in special cases, by order to show cause].

1. A party shall make each motion in writing, unless it is made orally during a hearing or unless the judge otherwise permits it to be made orally.

2. No technical forms of motion are required. In a motion, a party shall state the grounds upon which the motion is made [and], the relief or order being sought[.] and the date when the matter shall be submitted to the judge for disposition. A party shall submit a proposed form of order with each motion, unless the judge waives this requirement.

[(b) A party shall submit a proposed form of order with each motion, unless this requirement is waived by the judge.]

[(c)] (b) A party shall file each motion with the Clerk, except for motions made during a hearing, other motions permitted by a judge to be made orally, and emergency motions.

[1. If the party provides an extra copy of the motion and a self-addressed stamped envelope, the Clerk shall mark the copy filed and mail it to the movant.]

[2. Motions made during a hearing and other motions permitted by a judge to be made orally shall be subject to the verbatim record requirements of N.J.A.C. 1:1-3.3.]

[3.] Upon filing, the Clerk shall transmit the motion [forthwith] to the judge assigned to the case. When a motion is filed in a case which has not yet been assigned to a judge, the Clerk shall immediately assign the case and shall transmit the motion to the judge along with the case file.

[(d) Where a motion is filed in advance of a scheduled hearing date, the judge shall attempt to schedule the motion for decision before that hearing date.]

[(e)] (c) In a motion for substantially the same relief as that previously denied, a party shall specifically identify the previous proceeding and its disposition.

(d) In conference hearings, other than motions for emergency relief, discovery or conversion of the conference hearing into another form of proceeding, a party may not file a motion in advance of the scheduled hearing date.

[1:1-9.2] 1:1-11.2 Motions in writing; generally, no oral argument; time limits

(a) With the exception of emergency relief applications made pursuant to N.J.A.C. [1:1-9.6,] 1:1-11.6 and when a motion is expedited pursuant to (g) below, [when a motion is in writing] no action shall be taken [thereon] on motions in writing until at least 20 days have expired from the date of service upon the opposing party. [unless an expedited schedule is ordered for the purpose of complying with N.J.A.C. 1:1-9.1(d), or for other good cause shown.]

(b) The moving papers shall establish a submission date at least 20 days from the date of service upon the opposing party, when the matter will be submitted to a judge for disposition. Proof of service shall be filed with the moving or responsive papers [or promptly thereafter].

(c) The opposing parties shall file and serve responsive papers no later than 10 days after receiving the moving papers.

(d) The moving party may file and serve further papers responding to any matter raised by the opposing party and shall do so no later than five days after receiving the responsive papers.

(e) All motions in writing shall be submitted for disposition on the papers unless [an] oral argument is directed by the judge. [When oral argument is directed by the judge, a motion shall be considered submitted for disposition at the close of argument.]

(f) [All] With the exception of motions for summary decision under N.J.A.C. 1:1-11.5 and motions concerning predominant interest in consolidated cases under N.J.A.C. 1:1-16.6, all motions shall be decided within 10 days after they are submitted for disposition.

[(g) The time requirements of this rule may be modified in the discretion of the judge for good cause.]

(g) A party may request an expedited schedule for disposition of a motion by arranging a telephone conference between the judge and all parties. If the judge agrees to expedite, he or she must establish a schedule for responsive papers, submission and decision.

[1:1-9.3] 1:1-11.3 Procedure when oral argument is directed

(a) When oral argument is directed on a motion, the Clerk [or the judge] shall serve upon the parties a notice complying with the requirements of N.J.A.C. [1:1-8.2(c).] 1:1-8.3(f).

[(b) The judge may hear the matter wholly or partly on oral testimony or on depositions, and may direct any affiant to submit to cross examination.]

(c) Provided that all parties consent to the method and appropriate terms as shall be established by the judge, including provision for sound recording, the matter may be orally argued by conference telephone call.]

(b) Unless otherwise ordered for good cause shown, all motions for which oral argument has been directed shall be heard by telephone conference without any personal appearance of the parties upon such terms as shall be established by the judge, including provisions for sound recording.

(c) A motion for which oral argument has been directed shall be considered submitted for disposition at the close of argument.

[1:1-9.4] 1:1-11.4 Affidavits; briefs and supporting statements; evidence on motions

(a) Motions and answering papers shall be accompanied by all necessary supporting affidavits and brief or supporting statements. All motions and answering papers shall be supported by affidavits for facts relied upon which are not of record or which are not the subject of official notice. Such affidavits shall set forth only facts which are admissible in evidence under N.J.A.C. [1:1-15] 1:1-14, and to which affiants are competent to testify. Properly verified copies of all papers or parts of papers referred to in such affidavits may be annexed thereto.

(b) In the discretion of the judge, a party or parties may be required to submit briefs or supporting statements pursuant to the schedule established in N.J.A.C. [1:1-9.2] 1:1-11.2 or as ordered by the judge.

(c) The judge may hear the matter wholly or partly on affidavits or on depositions, and may direct any affiant to submit to cross-examination and may permit supplemental or clarifying testimony.

[1:1-9.5 Disposition of motions; drafting the order

(a) When a motion has been made in writing, the judge shall render a decision on the motion by signing or modifying and signing the proposed order filed with the motion or by instructing the prevailing party to prepare and submit an order in accordance with (b) below. When a motion has been made orally, the judge may render a decision either orally on the record or by a written order.

(b) The prevailing party on oral motion shall draft an appropriate order, unless waived by the judge. This order shall be submitted to the judge on five days notice to all parties who may, within that time period, submit to the judge on notice to the parties alternative forms of order.

(c) The judge after signing any proposed order shall cause the order to be served forthwith upon the parties.]

[SUBCHAPTER 13. SUMMARY DECISION]

1:1-11.5 Motion for summary decision; when and how made; partial summary decision

[1:1-13.1 Time of motion]

(a) At any time after a case is determined to be contested, a party may move for summary decision upon all or any of the substantive issues therein.

[1:1-13.2 Motion and proceedings thereon; reviewable by agency]

[(a)] (b) The motion for summary decision shall be served with briefs and with or without supporting affidavits. The decision sought [shall] may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law. [The judge shall find the facts and state the conclusions in accordance with N.J.A.C. 1:1-16.3. A summary decision may be rendered on any issue in the contested case, although there is a genuine factual dispute as to other issues.] When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding. If the adverse party does not respond, a summary decision, if appropriate, shall be entered.

[1:1-13.4 Opposing affidavits

(a) When a motion for summary decision is made and supported as provided by N.J.A.C. 1:1-13.2, an adverse party in order to prevail must set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding. If the adverse party does not so respond, a summary decision, if appropriate, shall be entered. If it appears from the affidavits that a party is then unable to establish the existence of a genuine issue of material fact, the judge may deny the motion, may order a continuance to permit additional affidavits or discovery to be obtained, or may enter such other order as may be appropriate.

(b) If the judge is satisfied, at any time, that any party submitting an affidavit pursuant to this rule in bad faith or solely for the purpose of delay, the judge shall consider sanctions as permitted in N.J.A.C. 1:1-3.5.]

[(b)] (c) Motions for summary decision shall be decided within 45 days from the date of submission. Any summary decision not decided by an agency head [rendered by an administrative law judge] which fully disposes of the case shall be treated as an initial decision under N.J.A.C. [1:1-16.3.] 1:1-17.1. [Denial of a motion for summary decision shall be treated as required by N.J.A.C. 1:1-9.5 and N.J.A.C. 1:1-9.7.] Any partial summary decision shall be treated as required by [N.J.A.C. 1:1-13.3(b).] (d) below.

[(c) When an agency retains a case pursuant to N.J.S.A. 52:14F-8a., summary decision motions may be submitted directly to the agency head.]

[1:1-13.3 Contested case not fully adjudicated on motion]

[(a)] (d) If on motion under this section, a decision is not rendered upon all the substantive issues in the contested case and a hearing is necessary, the judge at the time of ruling on the motion, by examining the papers on file in the case as well as the motion papers, and by interrogating counsel, if necessary, shall, if practicable, ascertain what material facts exist without substantial controversy and shall thereupon enter an order specifying those facts and directing such further proceedings in the contested case[s] as are appropriate. [As] At the hearing in the contested case, the facts so specified shall be deemed established.

[(b)] (e) A partial summary decision shall by its terms not be effective until a final agency decision has been rendered on the issue, either upon interlocutory review pursuant to N.J.A.C. [1:1-9.7] 1:1-13.10 or at the end of the contested case, pursuant to N.J.A.C. [1:1-16.5] 1:1-17.6. At the discretion of the judge, for the purpose of avoiding unnecessary litigation or expense by the parties, the order and decision, along with those portions of the record which are pertinent, may be submitted to the agency head for immediate review as an initial decision, pursuant to N.J.A.C. [1:1-16.4, 16.5, and 16.6] 1:1-17.4 and 17.6.

[(c)] (f) Review by the agency head of any partial summary decision shall not cause delay in scheduling hearing dates or result in a postponement of any scheduled hearing dates unless the judge assigned to

the case orders that a postponement is necessary because of special arrangements, possible prejudice, unproductive effort or other good cause.

[1:1-9.6] **1:1-11.6** Emergency relief

(a) Where authorized by law and where irreparable harm will result without an expedited decision granting or prohibiting some action or relief connected with a contested case, emergency relief pending a final decision on the whole contested case may be ordered upon the application of a party.

(b) Application for emergency relief [may] **shall** be made directly to the agency head and may not be made to the Office of Administrative Law (OAL).

(c) An agency head receiving an application for emergency relief may either hear the application [personally] or forward the matter to the Office of Administrative Law for hearing on the application for emergency relief. An application for emergency relief shall be heard on an expedited basis.

(d) **The moving party must serve notice of the request for emergency relief on all parties. Proof of service will be required if the adequacy of notice is challenged.** Opposing parties shall be given ample opportunity under the circumstances to respond to an application for emergency relief.

(e) Where circumstances require some immediate action by the agency head to preserve the subject matter of the application pending the expedited hearing, or where a party applies for emergency relief under circumstances which do not permit an opposing party to be fully heard, the agency head may issue an order granting temporary relief. Temporary relief may continue until the agency head issues a decision on the application for emergency relief.

(f) When temporary relief is granted by an agency head under circumstances which do not permit an opposing party to be fully heard, temporary relief shall:

1. Be based upon specific facts shown by affidavit or oral testimony, that the moving party has made an adequate, good faith effort to provide notice to the opposing party, or that notice would defeat the purpose of the application for relief;

2. Include a finding that immediate and irreparable harm will probably result before adequate notice can be given;

3. Be based on the likelihood that the moving party will prevail when the application is fully argued by all parties;

4. Be as limited in scope and temporary as is possible to allow the opposing party to be given notice and to be fully heard on the application; and

5. Contain a provision for serving and notifying all parties and for scheduling a hearing before the agency head or for transmitting the application to Office of Administrative Law.

(g) Upon determining any application for emergency relief, the agency head shall forthwith issue and immediately serve upon the parties a written order on the application. If the application is related to a contested case that has been transmitted to Office of Administrative Law, the agency head shall also serve the Clerk of Office of Administrative Law with a copy of the order.

(h) Applications to an agency head for emergent relief in matters previously transmitted to the Office of Administrative Law shall not delay the scheduling or conduct of hearings, unless the presiding judge determines that a postponement is necessary due to special requirements of the case, because of probable prejudice or for other good cause.

(i) Upon determining an application for emergency relief, the judge forthwith shall issue to the parties, the agency head and the Clerk a written order on the application. The Clerk shall file with the agency head any papers in support of or opposition [of] to the application which were not previously filed with the agency and a sound recording of the oral argument on the application, if any oral argument has occurred.

(j) The agency head's review of the judge's order shall be completed without undue delay but no later than 45 days from entry of the judge's order, except when, for good cause shown and upon notice to the parties, the time period is extended by the joint action of the Director of the Office of Administrative Law and the agency head. Where the agency head does not act on review of the judge's order within 45 days, the judge's order shall be deemed adopted.

(k) Review by an agency head of a judge's order for emergency relief shall not delay the scheduling or conduct of hearings in the Office of Administrative Law, unless the presiding judge determines that a postponement is necessary due to special requirements of the case, because of probable prejudice or for other good cause.

[1:1-9.7] Interlocutory review

(a) Except for the special review procedures provided in N.J.A.C. 1:1-9.6 (Emergency relief), and 13.3(b) (partial summary decision), an

order or ruling may be reviewed interlocutorily by an agency head at the request of a party pursuant to this section.

(b) Any request for interlocutory review shall be made to the agency head no later than five working days from the date of the order or ruling. Any request for interlocutory review shall be in writing by memorandum, letter or motion and shall include a copy of the ruling, decision, holding or order sought to be reviewed. Copies of all documents submitted shall be filed with the judge and Clerk.

(c) Within 10 calendar days of the request for interlocutory review, the agency head shall notify the parties and the Clerk whether the order or ruling will be reviewed. If the agency head does not so act within 10 calendar days, the request for review shall be considered denied. Informal communication by telephone or in person to the parties or their representatives and to the Clerk within the required 10 calendar day period will satisfy this notice of requirement, provided that a written communication or order promptly follows.

(d) Where the agency head determines to conduct an interlocutory review, the agency head shall issue a decision, order or other disposition of the review at the earliest opportunity but no later than 20 days from receiving the request for review. Where the interests of justice require, the agency head shall conduct an interlocutory review on an expedited basis. Where the agency head does not issue an order within 20 days, the judge's ruling shall be considered conditionally affirmed.

(e) Where the proceeding generating the request for interlocutory review has been sound recorded and the agency head requests the verbatim record, the Clerk shall furnish the original sound recording or a certified copy within one day of the request. The party requesting the interlocutory review shall provide the agency head with all other papers, materials, transcripts or parts of the record which pertain to the request for interlocutory review.

(f) Within five working days of the agency head's notice that an interlocutory review will be conducted, the judge, in his or her discretion, may provide the agency head and the parties with a written memorandum stating the basis for the order or ruling.

(g) Upon certification by both the director and the agency head that good cause exists, and upon notice to the parties, the time limits established in this section may be extended. An extension may be granted where the need for a delay is caused by honest mistake, accident, or any cause compatible with due diligence, but not where the request is due to inattention.

(h) An agency head's determination to review an order or ruling shall not delay the scheduling or conduct of hearings, unless the presiding judge determines that a postponement is necessary due to special requirements of the case, because of probable prejudice, or for other good cause. Pending review by the agency head, a judge may conditionally proceed on an order or ruling in order to complete the evidential record in a case or to avoid disruption or delay in any ongoing or scheduled hearing.

(i) Any order or ruling reviewable under this rule is subject to review by the agency head after the judge renders the initial decision in the contested case, even if an application for interlocutory review:

1. Was not made;
2. Was made but the agency head declined to review the order or ruling; or
3. Was made and not considered by the agency head within the established time frame.]

**1:1-11.7 Disposition of motions**

**Disposition of motions which completely conclude a case shall be by initial decision. Disposition of all other motions shall be by order, pursuant to N.J.A.C. 1:1-13.9.**

**SUBCHAPTER [10.] 12. PRE[-]HEARING [PROCEDURES AND] CONFERENCES AND PROCEDURES**

[1:1-10.1] **1:1-12.1** Pre[-]hearing [procedures and] conferences

[(a) In appropriate cases, the clerk shall advise the parties or their attorneys that a pre-hearing conference will cover those matters listed in (c) below.

1. A pre-hearing conference may be held by telephone conference call on request of a party or at the instance of the judge.

2. In advance of the conference, upon no less than three days notice, the parties may be advised by the judge that other special matters will be discussed at the pre-hearing conference.]

(a) **A prehearing conference shall be scheduled in accordance with the criteria established in N.J.A.C. 1:1-8.1(d).**

(b) **The prehearing notice shall advise the parties, their attorneys or other representatives that a prehearing conference will cover those matters listed in N.J.A.C. 1:1-12.2 below and that discovery should have already been**

commenced. At the time of the prehearing conference, the participants shall be prepared to discuss one or more alternate dates when the parties and witnesses will be available for the evidentiary hearing. The judge may advise the parties that other special matters will be discussed at the prehearing conference.

[(b)] (c) [In the judge's discretion in an appropriate case, and] **In exceptional circumstances, the judge may**, upon no less than 10 days' notice, require the parties [may be required] to file with the judge and serve upon all other parties no later than three days before the scheduled pre[-]hearing conference, pre[-]hearing memoranda stating their respective positions on any or all of the matters specified in [(c)] N.J.A.C. 1:1-12.2 set forth in the same sequence and with corresponding numbers or on other special matters specifically designated.

(d) A prehearing conference shall be held by telephone conference call unless the judge otherwise directs.

(e) If an attorney or other representative who participates in the prehearing conference has no authority to settle the matter, the individual possessing such authority shall be readily available.

#### 1:1-12.2 Prehearing order; amendment

(a) [(c)] Within 10 days after the conclusion of the pre[-]hearing conference, the judge shall enter a written order [in the following sequence and with corresponding numbers, concisely] specifically setting out the matters listed in 1. through 14. below and shall cause the same to be served upon all parties. [determine at the conference.]

1. The nature of the proceeding and the issue or issues to be resolved including special evidence problems;

2. The parties and their status, e.g., petitioner, respondent, intervenor, etc.[:] and their attorneys or other representative of record. In the event that a particular member or associate of a firm is to try a case, or if outside trial counsel is to try the case, the name must be specifically set forth at the prehearing. No change in such designated trial counsel shall be made without leave of the judge if such change will interfere with the date for hearing. If the name of a specific trial counsel is not set forth, the judge and opposing parties shall have the right to expect any partner or associate to proceed with the trial on the date of hearing;

3. Any special legal requirements as to notice of hearing;

4. The schedule of hearing dates and the time and place of hearing;

5. Stipulations as to facts and issues;

6. Any partial settlement agreements and their terms and conditions;

[7. Special provisions for discovery;]

7. Any amendments to the pleadings contemplated or granted;

8. Discovery matters remaining to be completed and the date when discovery shall be completed for each mode of discovery to be utilized;

[8.] 9. Order of proofs [and witnesses];

[9.] 10. A list of exhibits marked for identification;

[10.] 11. A list of exhibits marked in evidence by consent;

[11.] 12. [Any limitation on the number of expert witnesses;] **Estimated number of fact and expert witnesses;**

[12.] 13. Any motions contemplated, pending and granted;

[13.] 14. Any direction with respect to the filing of briefs;

14. Any statutory requirements mandating the date of agency head decision;]

[15.] 14. Other special matters determined at the conference.

[16. In the event that a particular member or associate of a firm is to try a case, or if outside trial counsel is to try the case, the name must be specifically set forth. No change in such designated trial counsel shall be made without leave of the judge if such change will interfere with the date for hearing. If the name of a trial counsel is not specifically set forth, the judge and opposing parties shall have the right to expect any partner or associate to proceed with the trial on the day of hearing.]

(b) The prehearing order shall be prepared and distributed in accordance with N.J.A.C. 1:1-13.9.

[(d)] The parties shall be deemed to have consented to any of the terms or procedures established in the order if they do not file and serve objective to the form of the order within five days after receiving it.]

(c) The prehearing order may be amended by the judge to accommodate circumstances occurring after its entry date. Unless precluded by law, a prehearing order may also be amended by the judge to conform the order with the proofs.

(d) Any party may, upon written motion filed no later than five days after receiving the prehearing order, request that the order be amended to correct errors or to accommodate changes occurring after its entry date.

## SUBCHAPTER [3.] 13. CONDUCT OF [CONTESTED] CASES [GENERALLY]

### [1:1-3.1] 1:1-13.1 Public hearings; records as public; [exceptions] sealing a record

(a) All evidentiary hearings, proceedings on motions and other applications shall be conducted as public hearings unless otherwise provided by statute, rule or regulation, or on order of a judge for good cause shown. Pre[-]hearing conferences and informal discussions immediately preceding the hearing or during the hearing to facilitate the orderly and expeditious conduct of the case [and settlement conferences] may, at the judge's discretion, be conducted in public or in closed session and recorded [at the judge's discretion]. Mediations and settlement conferences shall be held in closed session but may be recorded. All other proceedings in the presence of a judge shall be recorded verbatim either by a stenographic reporter or by sound recording devices. All discussions off the record, no matter how brief, except settlement discussions and mediations, shall be summarized generally for the record. The record of all hearings shall be open to public inspection, but the judge may, for good cause shown, order the sealing of the record or any part thereof.

(b) In considering whether to close a hearing and/or seal a record, [make an exception to the public hearing and public record standards of (a) above,] the judge shall consider the requirements of due process of law, other constitutional and statutory standards and matters of public policy. The judge shall [also] consider the need to [protest] protect against unwarranted disclosure of sensitive financial information or trade secrets, to protect parties or witnesses from undue embarrassment or deprivations of privacy, or to promote or protect other equally important rights or interests. [The treatment of testimony or exhibits shall be on such terms as are appropriate to balance public and private rights or interests and to preserve the record for purposes of review.]

(c) When sealing a record, the judge must specify the consequences of such an order to all material in the case file including any evidence, the stenographic notes or audiotapes and the initial decision. The treatment of testimony or exhibits shall be on such terms as are appropriate to balance public and private rights or interests and to preserve the record for purposes of review. The judge shall also indicate what safeguards shall be imposed upon the preparation and disclosure of any transcript of the proceedings.

### [1:1-3.2] 1:1-13.2 Expedition; settlement conferences; special time requirements; inactive list

(a) Hearings and other proceedings [in contested cases] shall proceed with all reasonable expedition and, to the greatest extent possible, shall be held at one place and shall continue, except for brief intervals of the sort normally involved in judicial proceedings, without suspension until concluded.

[(b)] The judge may schedule conferences prior to the hearing to reach agreement upon as many matters as possible.

(c) The Clerk or judge may establish a specially accelerated or decelerated schedule of proceedings or time limits to meet statutory requirements or the special needs of the parties or the particular case.

(d) The parties shall promptly advise the Clerk and the judge of the happening of any event which might delay the conduct of the case.

(e) Where a party to a pending case is mentally or physically incapable of proceeding or is with other just excuse unable to proceed without substantial inconvenience or inordinate expense, that party or any other interested person may move to place the case on the inactive list.

1. Upon affidavit or other adequate proof, the judge may determine to place the case on an inactive list established for this purpose for as brief a period as possible not to exceed six months.

2. The clerk shall maintain the inactive list and shall return the case to an active status after the specified period has expired unless, upon motion and further proof, the judge determines that the party is still with just excuse unable to proceed.

3. A judge may order a case to continue on the inactive list for successive brief periods, each not to exceed six months.

4. The clerk shall notify all parties and the agency of any action taken under this section.]

(b) The parties shall promptly advise the Clerk and the judge of the happening of any event which will probably delay the conduct of the case.

### [1:1-3.6] Reading initial papers and briefs in advance

In advance of any pre-hearing conference, settlement conference, hearing on a motion, evidentiary hearing, or other proceeding, the judge shall have read and be fully familiar with all initial papers, pleadings, motions, notices and briefs filed in the case.]

**[1:1-3.10] 1:1-13.3 Interpreters; payment**

(a) Any party at his or her own cost may obtain an interpreter [when needed to present evidence].

(b) Taking into consideration the complexity of the issues and communications involved, the judge [shall] may require that an interpreter be taken from an official registry of interpreters or otherwise be assured that the proposed interpreter can adequately aid and enable the witness in conveying information to the [court] judge.

(c) **If all parties consent, the judge may accept as an interpreter a friend or relative of a party or witness, any employee of a state or local agency, or other person who can provide acceptable interpreter assistance.**

**[1:1-3.5] 1:1-13.4 Sanctions: Failure to appear; untimely adjournment applications; failure to comply with orders or requirements of this chapter; [obstructing the orderly conduct of proceedings]**

[(a) If, without just excuse or because of failure to give reasonable attention to the matter, no appearance is made by or on behalf of a party on the return of a motion, at a pre-hearing conference, at a settlement conference, or on the date of hearing, or an untimely application is made for an adjournment, a judge may order any one or more of the following:

1. The payment by the delinquent attorney or party of costs, in such amount as the judge shall fix, to the State of New Jersey or an aggrieved party;

2. The payment by the delinquent attorney or party of reasonable expenses, including attorney's fees to an aggrieved party;

3. The dismissal of the petition, any claim or motion, the filing of decision by default, or the granting of the motion; or

4. Such other action as the judge deems appropriate.]

(a) **If a party or representative fails to appear at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for 10 days before taking any action. If the judge does not receive an explanation for the nonappearance within 10 days, the judge shall dismiss the matter or grant the requested relief. The initial decision shall note that the dismissal or relief is ordered because the party failed to appear. If the nonappearing party submits an explanation in writing, a copy must be served on all other parties and the other parties may respond.**

1. If the judge receives an explanation, the judge shall reschedule the matter and may, at his or her discretion, order any of the following:

i. The payment by the delinquent representative or party of costs in such amount as the judge shall fix, to the State of New Jersey or the aggrieved person;

ii. The payment by the delinquent representative or party of reasonable expenses, including attorney's fees, to an aggrieved representative or party; or

iii. Such other case-related action as the judge deems appropriate.

2. If the judge concludes, from the explanation received, that the nonappearing party or representative is intentionally attempting to delay the proceeding, the judge may refuse to reschedule the matter and shall grant the requested relief or dismiss the claim.

(b) If the judge dismisses the matter or grants the requested relief, the party who failed to appear at the hearing may request a remand in an exception to the initial decision.

[(b)] (c) For unreasonable failure to comply with any order of a judge or with any requirements of this chapter [including but not limited to the rules requiring filing of proposed orders, affidavits, prehearing memoranda or briefs.], the judge may:

1. Dismiss or grant the motion or application;

2. Suppress a defense or claim;

3. Exclude evidence;

4. Continue the proceeding and consider sanctions under (a)1. i. or ii. above; or

5. Take other appropriate case-related action.

(c) Any party, attorney at law or other representative of a party who engages in behavior that obstructs the orderly conduct of proceedings, shall be served by the clerk with a motion for sanctions. This motion shall be argued orally before a judge other than the one presiding over the case in which the alleged obstructive behavior occurred. On the return date, if it is determined that obstructive behavior occurred, the judge shall decide whether the matter should be referred to:

1. The courts for enforcement;

2. The New Jersey Supreme Court for disciplinary action;

3. An appropriate Ethics Committee.]

**[1:1-3.8] 1:1-13.5 [Conduct of lawyers, judges and agency personnel] Ex parte communications**

(a) **Except as specifically permitted by law or this chapter, [Neither] a judge [nor an agency head in any contested case in the Executive Branch**

of State Government, except as specifically authorized by law or this chapter,] may not initiate or consider ex parte any evidence or communications concerning issues of fact or law in a pending or impending proceeding. Where ex parte communications are unavoidable, the judge [or agency head] shall advise all parties of the communications as soon as possible thereafter.

[(b) Unless otherwise provided in this chapter or clearly inapplicable in context, the rules and standards contained in the New Jersey Court Rules governing the conduct of lawyers, judges and court personnel shall govern the conduct of lawyers, judges and agency personnel appearing in or processing contested cases in the Executive Branch of State Government.]

(b) **The ex parte communications preclusion shall not encompass scheduling discussions or other practical administrative matters.**

(c) **Ex parte discussions relating to possible settlement may be conducted in the course of settlement conferences or mediations when all parties agree in advance.**

[(c)] (d) Where an agency or agency staff is a party to a contested case, the legal representative appearing and acting for the agency in the case may not engage in ex parte communications concerning that case with the [judge, except for scheduling or other similar purposes or the] transmitting agency head, except [for purposes of settlement discussion, and may not] for purposes of conferring settlement authority on the representative or when necessary to the discharge of the agency head's broad regulatory responsibilities. In no event may the legal representative participate in making or preparing the final decision in the case.

**[1:1-3.9] 1:1-13.6 Judge's powers in presiding over prehearing activities, conducting hearings, developing records and rendering initial decisions**

[A judge shall have full power, jurisdiction, and authority to call and examine witnesses and to issue all orders necessary for the proper and expeditious handling of contested cases assigned for disposition.]

(a) The judge may schedule any form of hearing or proceeding and establish appropriate location areas and instruct the Clerk to issue all appropriate notices.

(b) When required in individual cases, the judge may supersede any notice issued by the Clerk by informing the parties and the Clerk of this action.

(c) Depending on the needs of the case, the judge may schedule additional hearing dates, declare scheduled hearing dates unnecessary, or schedule any number of in-person conferences or telephone conferences.

(d) When required in individual cases, the judge at any time of the proceeding may convert any form of proceeding into another, whether more of less formal or whether in-person or by telephone.

(e) The judge may bifurcate hearings whenever there are multiple parties, issues or claims, and the nature of the case is such that a hearing of all issues in one proceeding may be complex and confusing, or whenever a substantial saving of time would result from conducting separate hearings or whenever bifurcation might eliminate the need for further hearings.

(f) The judge may establish special accelerated or decelerated schedules to meet the special needs of the parties or the particular case.

(g) The judge may administer any oaths or affirmations required or may direct a certified court report to perform this function.

(h) The judge may render any ruling or order necessary to decide any matter presented to him or her which is within the jurisdiction of the transmitting agency or the agency conducting the hearing.

(i) The judge shall control the presentation of the evidence and the development of the record and shall determine admissibility of all evidence produced. The judge may permit narrative testimony whenever appropriate.

(j) The judge may utilize his or her sanction powers to ensure the proper conduct of the parties and their representatives appearing in the matter.

(k) The judge may limit the presentation of oral or documentary evidence, the submission of rebuttal evidence and the conduct of cross-examination.

(l) The judge may determine that the party with the burden of proof shall not begin the presentation of evidence and may require another party to proceed first.

(m) The judge may make such rulings as are necessary to prevent argumentative, repetitive or irrelevant questioning and to expedite the cross-examination to an extent consistent with disclosure of all relevant testimony and information.

(n) The judge may compel production of relevant materials, files, records and documents and may issue subpoenas to compel the appearance of any witness when he or she believes that the witness or produced materials may assist in a full and true disclosure of the facts.

(o) The judge may require any party at any time to clarify confusion or gaps in the proofs. The judge may question any witness to further develop the record.

(p) The judge may take such other actions as are necessary for the proper, expeditious and fair conduct of the hearing or other proceeding, development of the record and rendering of a decision.

**1:1-13.7 Conduct of conference hearings, plenary hearings and telephone hearings**

(a) The judge shall commence conference and plenary hearings by stating the case title and the docket number, asking the representatives or parties present to state their names for the record and describing briefly the matter in dispute. The judge shall also, unless all parties are represented by counsel or otherwise familiar with the procedures, state the procedural rules for the hearing. The judge may also permit any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing to be entered into the record at this time.

(b) In conference and plenary hearings, the party with the burden of proof may make an opening statement. All other parties may make statements in a sequence determined by the judge.

(c) After opening statements in conference and plenary hearings, the party with the burden of proof shall begin the presentation of evidence unless the judge has determined otherwise. The other parties may present their evidence in a sequence determined by the judge.

(d) Cross-examination of witnesses in conference and plenary hearings shall be conducted in a sequence and in a manner determined by the judge to expedite the hearing while ensuring a fair hearing.

(e) When all parties and witnesses have been heard in conference and plenary hearings, opportunity shall be offered to present oral final argument, in a sequence determined by the judge.

(f) Unless permitted or requested by the judge, there shall be no proposed findings of fact, conclusions of law, briefs, forms of order or other dispositions permitted after the final argument in conference and plenary hearings. In the discretion of the judge, proposed findings or other submissions may be offered at the hearing in lieu of or in conjunction with the final argument.

1. When proposed findings or other submissions are permitted or requested by the judge, the parties shall conform to a schedule that may not exceed 30 days after the last day of testimony or the final argument.

2. When the judge permits proposed findings or other submissions to be prepared with the aid of a transcript, the transcript must be ordered immediately. The 30-day submission time frame shall commence upon receipt of the transcript.

3. Any proposed findings of fact submitted by a party shall not be considered unless they are based on facts proved in the hearing.

4. Any reference in briefs or other such submissions to initial decisions shall include either the Office of Administrative Law docket number or a reference to New Jersey Administrative Reports.

(g) The hearing shall be concluded in conference and plenary cases after the final argument or, if a schedule has been established for subsequent submissions, when the time established for the filing of such items has expired, or when the last such item has been received by the judge, whichever is earlier.

(h) A telephone hearing may be designated by the Clerk or judge as a conference or plenary hearing. A telephone hearing, whether conference or plenary, is begun by a party placing a conference call on a designated date and time to the judge and to any other parties in the case. When equity requires, the judge may begin the telephone hearing by placing the conference call.

**1:1-13.8 Conduct of proceedings on the papers**

(a) Upon transmittal of a case that may be conducted as a proceeding on the papers, the Clerk shall schedule a hearing and send a notice of hearing to the parties. The notice shall permit the party requesting the hearing to select a telephone hearing or a proceeding on the papers in lieu of the scheduled in-person hearing.

(b) Along with the notice of hearing, the Clerk shall transmit a certification, to be completed if the party requesting the hearing chooses to have a proceeding on the papers.

(c) A completed certification must be returned to the Clerk no later than 10 days before the scheduled hearing date. Statements, records and other documents which supplement the certification may also be submitted. Upon request and for good cause shown, the Clerk may grant additional time for submission of supplemental documents.

(d) At the conclusion of the time allotted in (c) above, the Clerk will assign the record for review and determination by a judge. The record consists of the certification and supplemental documents, as well as documents transmitted with the file by the transmitting agency.

(e) If no certification is received, the case will be heard as scheduled in (a) above. If the party requesting the hearing does not appear at the in-person hearing, the judge will decide the case on documents transmitted by the agency and contained in the file.

**1:1-13.9 Orders; preparation of orders**

(a) Any resolution which does not completely conclude the case shall be by order. Orders may be rendered in writing or orally on the record by the judge.

(b) Unless such review is precluded by law, all judges' orders are reviewable by an agency head in accordance with N.J.A.C. 1:1-13.10 or when rendering a final decision under N.J.A.C. 1:1-17.6.

(c) Orders may be prepared by a party at the direction of a judge. When prepared by a party, the order shall be filed with the judge and served on all parties who may within five days after service object to the form of the order by writing to the judge with a copy to all parties. Upon objection to the form of the order, the judge, without oral argument or any further proceedings, may settle the form of the order either by preparing a new order or by modifying the proposed order. After signing the order, the judge shall cause the order to be served upon the parties.

**[1:1-9.7] 1:1-13.10 Interlocutory review**

(a) Except for the special review procedures provided in N.J.A.C. [1:1-9.6] 1:1-11.6 (emergency relief), and [13.3(b)] 1:1-11.5(d) (partial summary decision), an order or ruling may be reviewed interlocutorily by an agency head at the request of a party [pursuant to this section].

(b) Any request for interlocutory review shall be made to the agency head and copies served on all parties no later than five working days from the [date] receipt of the written order or oral ruling[.], whichever is rendered first. An opposing party may, within three days of receipt of the request, submit an objection to the agency head. A copy must be served on the party who requested review. Any request for interlocutory review or objection to a request shall be in writing by memorandum, letter or motion and shall include a [copy] summary of the ruling, decision, or holding or a copy of the order sought to be reviewed. Copies of all documents submitted shall be filed with the judge and Clerk.

(c) Within 10 calendar days of the request for interlocutory review, the agency head shall notify the parties and the Clerk whether the order or ruling will be reviewed. If the agency head does not so act within 10 calendar days, the request for review shall be considered denied. Informal communication by telephone or in person to the parties or their representatives and to the Clerk within the required 10 calendar day period will satisfy this notice [of] requirement, provided that a written communication or order promptly follows.

(d) A party opposed to the grant of interlocutory review may, within three days of receiving notice that review was granted, submit to the agency head in writing arguments in favor of the order or ruling being reviewed. A copy shall be served on the party who requested review.

[(d)] (e) Where the agency head determines to conduct an interlocutory review, the agency head shall issue a decision, order or other disposition of the review at the earliest opportunity but no later than 20 days from receiving the request for review. Where the interests of justice require, the agency head shall conduct an interlocutory review on an expedited basis. Where the agency head does not issue an order within 20 days, the judge's ruling shall be considered conditionally affirmed. The time period for disposition may be extended for good cause for an additional 20 days if both the agency head and the Director of the Office of Administrative Law concur.

[(e)] (f) Where the proceeding generating the request for interlocutory review has been sound recorded and the agency head requests the verbatim record, the clerk shall furnish the original sound recording or a certified copy within one day of the request. The party requesting the interlocutory review shall provide the agency head with all other papers, materials, transcripts or parts of the record which pertain to the request for interlocutory review.

[(f)] (g) Within five working days of the agency head's notice that an interlocutory review will be conducted, the judge, in his or her discretion, may provide the agency head and the parties with a written memorandum stating the basis for the order or ruling.

[(g)] (h) [Upon certification by both the director and the agency head that good cause exists, and upon notice to the parties t] The time limits established in this section, with the exception of (e) above, may be extended by the agency head [An extension may be granted] where the need for a delay is caused by honest mistake, accident, or any cause compatible with due diligence[, but not where the request is due to inattention].

[(h)] (i) An agency head's determination to review interlocutorily an order or ruling shall not delay the scheduling or conduct of hearings, unless the presiding judge determines that a postponement is necessary due to special requirements of the case, because of probable prejudice, or for other good cause. Pending review by the agency head, a judge may conditionally proceed on an order or ruling in order to complete the evidential record in a case or to avoid disruption or delay in any ongoing or scheduled hearing.

[(i) (j) Any order or ruling reviewable [under this rule] interlocutorily is subject to review by the agency head after the judge renders the initial decision in the contested case, even if an application for interlocutory review;

1. Was not made;
2. Was made but the agency head declined to review the order or ruling; or
3. Was made and not considered by the agency head within the established time frame.

(k) In the following matters as they relate to proceedings before the Office of Administrative Law, the Director is the agency head for purposes of interlocutory review:

1. Disqualification of a particular judge due to interest or any other reason which would preclude a fair and unbiased hearing pursuant to N.J.A.C. 1:1-13.12;
2. Appearances of non-lawyers pursuant to N.J.A.C. 1:1-19.4;
3. Imposition of conditions and limitations upon a non-lawyer appearing pursuant to N.J.A.C. 1:1-19.5;
4. Sanctions under N.J.A.C. 1:1-13.4 consisting of the assessment of costs or expenses; and
5. Disqualification of attorneys pursuant to N.J.A.C. 1:1-19.3.

(l) Any request for interlocutory review of those matters specified in (k) above should be addressed to the Director of the Office of Administrative Law with a copy to the agency head who transmitted the case to the Office of Administrative Law. Review shall proceed in accordance with (b) through (h) above.

[1:1-3.3] 1:1-13.11 **Ordering a transcript; cost** [Verbatim record of proceedings; sound and stenographic recordings; requesting transcript; cost]

[(a) Pre-hearing conferences, settlement discussions, and informal discussions either immediately preceding hearing or during the hearing to facilitate orderly and expeditious conduct of the case, may be recorded at the discretion of the judge. All other proceedings in the presence of a judge shall be recorded verbatim either by a stenographic reporter or by sound recording devices. Any discussions off the record, no matter how brief, except settlement discussions, shall be summarized for the record.]

[(b)] (a) Any party, or any person with a legitimate need, may obtain a transcript of any proceeding which has been sound recorded by filing a request with the Clerk and by notifying all parties. Unless the requesting party is a State agency, the request shall be accompanied by a [\$100.00] \$200.00 security deposit for each day or fraction thereof of the proceeding. The Clerk shall promptly arrange for the preparation of the transcript with a copy for the case file. Upon completion of the transcript, the Clerk shall bill the requesting party for the preparation of the transcript and the copy. Upon receipt of payment, the Clerk shall forward the original transcript to the requesting party and shall return the deposit.

[(c)] (b) Any party may obtain an unofficial copy of a sound recorded proceeding by making a request to the Clerk accompanied by a blank standard cassette of appropriate length.

[(d)] (c) Any party, or any person with a legitimate need, may request the appropriate stenographic firm to prepare a transcript of any stenographically recorded proceeding and shall provide notice of the request to the Clerk and to all other parties. Unless the requesting party is a State agency, the stenographic firm may require a reasonable deposit. The reporter shall promptly prepare the transcript in accordance with standards established by the [Office of Administrative Law] State and shall file a copy with the Clerk at the time the original is delivered to the requesting party. The requesting party shall be charged for the copy filed with the Clerk at a rate not to exceed State contract rates.

[(e)] (d) Any party or person entitled by Federal statute or regulation to copy and inspect the verbatim transcript may arrange with the Clerk to review any transcript filed under [(b)] (a) or [(d)] (c) above and shall also be permitted to hear and receive a copy of any sound proceeding pursuant to [(c)] (b) above. All applications to obtain a transcript of any proceeding at public expense for use on appeal shall be made to the Appellate Court pursuant to New Jersey Court Rule R. 2:5-3 or in case of Federal appeals pursuant to applicable Federal Court Rules.

[(f)] (e) State agencies requesting official transcripts shall make provision for payment or shall pay the cost of production at rates established under the prevailing State contract rates; provided that [where a State agency is authorized by law to represent the public interest in the proceedings,] where the Public Advocate's office is representing the public interest in a proceeding and another party to the proceedings is entitled by law to recover the costs thereof from others, such other party shall

obtain, pay for and furnish to [such State agency] the Public Advocate upon request the official transcript.

#### 1:1-13.12 Disqualification of judges

(a) A judge shall, on his or her own motion, withdraw from participation in any proceeding in which the judge's ability to provide a fair and impartial hearing might reasonably be questioned, including but not limited to instances where the judge:

1. Has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
2. Is by blood or marriage the second cousin of or is more closely related to any party to the proceeding or an officer, director or trustee of a party;
3. Is by blood or marriage the first cousin of or is more closely related to any attorney in the case. This proscription shall extend to partners, employers, employees or office associates of any such attorney;
4. Is by blood or marriage the second cousin of or is more closely related to a likely witness to the proceeding;
5. While in private practice served as attorney of record or counsel in the case or was associated with a lawyer who served during such association as attorney of record or counsel in the proceeding, or the judge or such lawyer has been a witness concerning the case;
6. Has served in government employment and in such capacity participated as counsel, advisor or material witness concerning the proceeding;
7. Is interested, individually or as a fiduciary, or whose spouse or minor child residing in the same household is interested in the outcome of the proceeding; or
8. When there is any other reason which might preclude a fair and unbiased hearing and decision, or which might reasonably lead the parties or their representatives to believe so.

(b) A judge shall, as soon as practicable after assignment to a particular case, withdraw from participation in a proceeding whenever the judge finds that any of the criteria in (a)1.-8. above apply. A judge may not avoid disqualification by disclosing on the record the basis for disqualification and securing the consent of the parties.

(c) Any party may, by motion made pursuant to N.J.A.C. 1:1-11.1 et seq., apply to a judge for his or her disqualification. Such motion must be accompanied by a statement of the reasons for such application and shall be filed as soon as practicable after a party has reasonable cause to believe that grounds for disqualification exist. In no event shall the judge enter any order, resolve any procedural matters or render any other determination until the motion for disqualification has been decided.

(d) Any request for interlocutory review of an administrative law judge's order under this section shall be made pursuant to N.J.A.C. 1:1-13.10(k)-(l).

#### 1:1-13.13 Proceedings in the event of death, disability, departure from state employment, disqualification or other incapacity of judge

(a) If, by reason of death, disability, departure from state employment, disqualification or other incapacity, a judge is unable to continue presiding over a pending hearing or issue an initial decision after the conclusion of the hearing, the Clerk may schedule a conference to determine if the parties can settle the matter or, if not, can reach agreement upon as many matters as possible.

(b) In the event settlement is not reached, another judge shall be assigned to complete the hearing or issue the initial decision as if he or she had presided over the hearing from its commencement, provided:

1. The judge is able to familiarize himself or herself with the proceedings and all testimony by reviewing the transcript, exhibits marked in evidence and any other materials which are contained in the record; and
2. The judge determines that the hearing can be completed with or without recalling witnesses without prejudice to the parties.

(c) In the event the hearing cannot be continued for any of the reasons enumerated in (b) above, a new hearing shall be ordered by the judge.

### SUBCHAPTER [15.] 14. EVIDENCE RULES

#### [1:1-15.1 Definitions

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

"Burden of proof" means the obligation of a party to prove a fact either by a preponderance of the evidence or by clear and convincing evidence, as the case may be. Burden of proof is synonymous with burden of persuasion.

"Burden of producing evidence" means the obligation of a party to introduce evidence when necessary to avoid the risk of a contrary decision or preemptory finding on a material issue of fact.

"Conduct" includes all active and passive behavior, both verbal and non-verbal.

"Evidence" is the means from which inferences may be drawn as a basis of proof in the conduct of contested cases, and includes testimony in the form of opinion and hearsay.

"Finding of fact" means the determination from proof or official notice of the existence of a fact.

"The hearing" unless some other is indicated by the context of the rule where the term is used, means the evidentiary proceeding at which the question under a rule is raised, and not some earlier or later proceeding.

"Proof" is all of the evidence before the judge relevant to a fact in issue which tends to prove the existence or non-existence of such fact.

"Perceive" means acquire knowledge through one's own senses.

"Relevant evidence" means evidence having any tendency in reason to prove any material fact.

"Verbal" includes both oral and written words.

"Material fact" means a fact legally consequential to a determination of an issue in the case.]

#### [1:1-15.2 General rules

(a) Parties in contested cases shall not be bound by statutory or common law rules of evidence or any formally adopted in the rules of Court except as specifically provided in these rules. All relevant evidence is admissible except as otherwise provided herein. A judge may, in his or her discretion, exclude any evidence if its probative value is substantially outweighed by the risk that its admission will either:

1. Necessitate undue consumption of time; or
2. Create substantial danger of undue prejudice or confusion.

(b) Any party in a contested case may present his case or defense by oral and documentary evidence, submit rebuttal evidence and conduct such cross-examination as may be required, in the discretion of the judge, for a full and true disclosure of the facts.

(c) If the judge finds at the hearing that there is no bona fide dispute between the parties as to a material fact, and that fact has not been stipulated, such fact may be proved by any relevant evidence, and exclusionary rules shall not apply, except for (a) above or a valid claim of privilege.

(d) These rules shall be applied to promote fundamental principles of fairness and justice and to aid in the ascertainment of truth.

(e) Except as otherwise provided by this subchapter, by law or by administrative rule establishing a privilege:

1. Every person is qualified to be a witness; and
2. No person has a privilege to refuse to be witness; and
3. No person is disqualified to testify to any matter; and
4. No person has a privilege to refuse to disclose any matter or to produce any object or writing; and
5. No person has a privilege that another shall not be a witness or shall not disclose any matter or shall not produce any object or writing.

(f) Only evidence under oath or affirmation or evidence subject to official notice (see N.J.A.C. 1:1-15.3) shall be admitted or considered by a judge.

(g) When the qualification of a person to be a witness, or the admissibility of evidence, or the existence of a privilege is stated in these rules to be subject to a condition, and the fulfillment of the condition is in issue, the judge shall hold a preliminary inquiry to determine the issue. The judge shall indicate to the parties which one has the burden of producing evidence and the burden of proof on such issue as implied by the rule under which the question arises. No evidence may be excluded in determining such issue except pursuant to the judge's discretion under (a) above or a valid claim of privilege. This provision shall not be construed to restrict or limit the right of a party to introduce evidence subsequently which is relevant to weight or credibility.

(h) The judge presiding at the hearing in a contested case may not testify as a witness.]

#### 1:1-14.1 General rules

(a) Only evidence which is admitted by the judge and included in the record shall be considered.

(b) These rules shall be applied to promote fundamental principles of fairness and justice and to aid in the ascertainment of truth.

(c) Parties in contested cases shall not be bound by statutory or common law rules of evidence or any formally adopted in the New Jersey Court Rules except as specifically provided in these rules. All relevant evidence is admissible except as otherwise provided herein. A judge may, in his or her discretion, exclude any evidence if its probative value is substantially outweighed by the risk that its admission will either:

1. Necessitate undue consumption of time; or
2. Create substantial danger of undue prejudice or confusion.

(d) If the judge finds at the hearing that there is no bona fide dispute between the parties as to any unstipulated material fact, such fact may be proved by any relevant evidence, and exclusionary rules shall not apply, except for (c) above or a valid claim of privilege.

(e) When these rules state that the qualification of a person to be a witness, or the admissibility of evidence, or the existence of a privilege is subject to a condition, and the fulfillment of the condition is in issue, the judge shall hold a preliminary inquiry to determine the issue. The judge shall indicate which party has the burden of producing evidence and the burden of proof on such issue as implied by the rule under which the question arises. No evidence may be excluded in determining such issue except pursuant to the judge's discretion under (c) above or a valid claim of privilege. This provision shall not be construed to restrict or limit the right of a party to introduce evidence subsequently which is relevant to weight or credibility.

#### [1:1-15.3] 1:1-14.2 Official notice

(a) Official [N]notice may be taken of judicially noticeable facts as [provided] explained in [the following] Rule 9 of the New Jersey Rules of Evidence[.]; [Rule 9 (Facts and Law Which Must or May be Judicially Noticed); Rule 10 (Determination as to Propriety of Judicial Notice and Tenor of Matter); Rule 11(b) and (c) (Recording and Indicating Source of Matter Judicially Noticed) and Rule 12(1) and (3) (Judicial Notice in Proceedings Subsequent to Trial).]

(b) Official [N]notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the agency or the judge. [Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The experience, technical competence, and specialized knowledge of the agency or the judge may be utilized in the evaluation of the evidence, provided this is disclosed of record.]

(c) Parties must be notified of any material of which the judge intends to take official notice, including preliminary reports, staff memoranda or other noticeable data. The judge shall disclose the basis for taking official notice and give the parties a reasonable opportunity to contest the material so noticed.

#### [1:1-15.4] 1:1-14.3 Presumptions

[(a) A presumption is a rebuttable assumption of fact resulting from a rule of law which requires such fact to be assumed from another fact or group of facts found or otherwise established in the contested case.]

[(b)] No evidence offered to rebut a presumption may be excluded except pursuant to the judge's discretion under N.J.A.C. [1:1-15.2(a)] 1:1-14.1(c) or a valid claim of privilege.

#### [1:1-15.6] 1:1-14.4 Privileges

The rules of privilege recognized by law or contained in the following New Jersey Rules of Evidence shall apply in contested cases to the extent permitted by the context and similarity of circumstances: Rule 23 (Privilege of Accused); Rule 24 (Definition of Incrimination); Rule 25 (Self-incrimination); Rule 26 (Lawyer-Client Privilege); [Rule 26A-1] N.J.S.A. 45:14B-28 (Psychologist's Privilege); [Rule 26A-2] N.J.S.A. 2A:84-22.1 et seq. (Patient and Physician Privilege); [Rule 26A-3] N.J.S.A. 2A:84A-22.8 and N.J.S.A. 2A:84A-22.9 (Information and Data of Utilization Review Committees of Hospitals and Extended Care Facilities); N.J.S.A. 2A:84A-22.11 et seq. (Rape Counselor Privilege); Rule 27 ([Newspaperman's] Newsperson's Privilege); Rule 28 (Marital Privilege-Confidential Communications); N.J.S.A. 45:8B-29 (Marriage Counselor Privilege); Rule 29 (Priest-Penitent Privilege); Rule 30 (Religious Belief); Rule 31 (Political Vote); Rule 32 (Trade Secret); Rule 34 (Official Information); Rule 36 (Identity of Informer); Rule 37 (Waiver of Privilege by Contract or Previous Disclosure; Limitations); Rule 38 (Admissibility of Disclosure Wrongfully Compelled); Rule 39 (Reference to Exercise of [Privilege] Privileges); and Rule 40 (Effect of Error in Overruling Claim of Privilege).

#### [1:1-15.8] 1:1-14.5 Hearsay evidence; residuum rule

(a) Subject to the judge's discretion to exclude evidence under N.J.A.C. [1:1-15.2(a)] 1:1-14.1(c) or a valid claim of privilege, hearsay evidence shall be admissible in the trial of contested cases. Hearsay evidence which is admitted shall be accorded whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability.

(b) Notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.

**[1:1-15.9] 1:1-14.6 Authentication and content of writings**

[The following New Jersey Rules of Evidence shall apply to the trial of contested cases, within the discretion of the judge, to the extent necessary to assure the authenticity and reliability of writings: Rule 67 (Authentication Required); Rule 68 (Authentication of Copies of Records); Rule 69 (Certificate of Lack of Record); Rule 70 (Original Writings as the Best Evidence); and Rule 71 (Proof of Attested Writings).]

**Any writing offered into evidence which has been disclosed to each other party at least five days prior to the hearing shall be presumed authentic. At the hearing either party may raise questions of authenticity. Where a genuine question of authenticity is raised the judge may require some authentication of the questioned document. For these purposes the judge may accept a submission of proof, in the form of an affidavit, certified document or other similar proof, no later than 10 days after the date of the hearing.**

**[1:1-3.4] 1:1-14.7 Exhibits**

(a) The verbatim record of the proceedings shall include references to all exhibits and, as to each, the offering party, a brief description of the exhibit stated by the offering party or the judge, and the marking directed by the judge. The verbatim record shall also include a record of the exhibits retained by the judge at the end of the proceedings and of the disposition then made of the other exhibits.

(b) Parties should, whenever practicable, [submit exhibits with a copy of each.] **provide each party to the case with a copy of any exhibit offered into evidence.** [Copies shall subsequently be conformed as to marking by the judge and shall be deposited in the Clerk's file of the case.] **Large exhibits that cannot be placed within the judge's file may be either photographed, attached to the file, or described in the record and committed to the safekeeping of a party. All other admitted [Original] exhibits shall be retained in the judge's file until certified to the agency head pursuant to N.J.A.C. [1:1-16.3] 1:1-17.1. [or returned to the parties.]**

(c) The standard marking for exhibits shall be:

1. P = petitioner;
2. R = respondent;
3. A = [agency:] **appellant**;
4. J = joint;
5. C = judge;
6. I = **intervenor**;

[6.] 7. Such other additional markings required for clarity as the judge may direct.

**[1:1-15.5] 1:1-14.8 Witnesses; requirements for testifying; testifying by telephone**

(a) **Except as otherwise provided by this subchapter, by statute or by rule establishing a privilege:**

1. Every person is qualified to be a witness; and
2. No person has a privilege to refuse to be a witness; and
3. No person is disqualified to testify to any matter; and
4. No person has a privilege to refuse to disclose any matter or to produce any object or writing; and
5. No person has a privilege that another shall not be a witness or shall not disclose any matter or shall not produce any object or writing but the judge presiding at the hearing in a contested case may not testify as a witness.

[(a)] (b) A person is disqualified to be a witness if the judge finds the proposed witness is incapable of expression concerning the matter so as to be understood by the judge directly or through interpretation by one who can understand the witness, or the proposed witness is manifestly incapable of understanding the duty of a witness to tell the truth. An interpreter is subject to all the provisions of these rules relating to witnesses.

(c) As a prerequisite for the testimony of a witness there must be evidence that the witness has personal knowledge of the matter, or has special experience, training or education, if such be required. **Personal knowledge may be obtained through hearsay.** Such evidence may be provided by the testimony of the witness. [The judge may exclude the testimony of a witness that he or she perceived a matter if the judge finds no reasonable basis for believing that the witness did perceive the matter.] In exceptional circumstances, the judge may receive the testimony of [the] a witness conditionally, subject to [the] evidence of knowledge, experience, training or education being later supplied in the course of the proceedings.

[(b)] (d) A witness [before testifying shall be required to take an oath or make an affirmation or declaration] **may not testify without taking an oath or affirming** to tell the truth under the penalty provided by law. No witness may be barred from testifying because of religion or lack of it.

(e) **Testimony of a witness may be presented by telephone if all parties agree and the judge finds there is good cause for permitting the witness to testify by telephone.**

(f) **Testimony of a witness may be given in narrative fashion rather than by question and answer format if the judge permits.**

**[1:1-15.7] 1:1-14.9 Expert and other opinion testimony**

(a) If a witness is not testifying as an expert, testimony of that witness in the form of opinions or inferences is limited to such opinions or inferences as the judge finds:

1. May be rationally based on the perception of the witness; and
2. Are helpful to a clear understanding of the witness' testimony or to the fact in issue.

(b) If a witness is testifying as an expert, testimony of that witness in the form of opinions or inferences is [limited to such opinions or inferences as the judge finds are] **admissible if such testimony will assist the judge to understand the evidence or determine a fact in issue and the judge finds the opinions or inferences are:**

1. [Based primarily on facts, data or other expert opinion established by evidence in the contested case] **Based on facts and data perceived by or made known to the witness at or before the hearing; and**
2. Within the scope of the special knowledge, skill, experience or training possessed by the witness.

(c) Testimony in the form of opinion or inferences which is otherwise admissible is not objectionable because it embraces the ultimate issue or issues to be decided by the judge.

(d) A witness may be required, before testifying in terms of opinions or inference, to be first examined concerning the data upon which the opinion or inference is based.

(e) Questions calling for the opinion of an expert witness need not be hypothetical in form unless, in the discretion of the judge, such form is required.

(f) **If facts and data are of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, those facts and data upon which an expert witness bases opinion testimony need not be admissible in evidence.**

**1:1-14.10 Offers of settlement inadmissible**

**Offers of settlement, proposals of adjustment and proposed stipulations shall not constitute an admission and shall not be admissible.**

**1:1-14.11 Stipulations**

**The parties may by stipulation agree upon the facts or any portion thereof involved in any controversy. Such a stipulation shall be regarded as evidence and shall preclude the parties from thereafter challenging the facts agreed upon.**

**1:1-14.12 Prior transcribed testimony**

(a) If there was a previous proceeding in the same matter which was electronically or stenographically recorded, a party may, unless otherwise precluded by law, offer the transcript of a witness in lieu of producing the witness at the hearing provided that the witness' testimony was taken under oath, all parties were present at the proceeding and were afforded a full opportunity to cross-examine the witness.

(b) A party who intends to offer a witness' transcribed testimony at the hearing must give all other parties and the judge at least five days notice of that intention.

(c) **Opposing parties may subpoena the witness to appear personally. Any party may produce additional witnesses and other relevant evidence at the hearing.**

(d) **When permissible by law, the entire controversy may be presented solely upon such transcribed testimony if all parties agree and the judge approves.**

**SUBCHAPTER [12] 15. INTERVENTION AND PARTICIPATION****[1:1-12.1] 1:1-15.1 Who may apply to intervene; status of intervenor**

(a) Any person or entity not initially a party, who has a statutory right to intervene or who will be substantially, specifically and directly affected by the outcome of a contested case, may on motion, seek leave to intervene.

(b) Persons or entities permitted to intervene shall have all the rights and obligations of a party to the [preceding.] **proceeding.**

**[1:1-12.2] 1:1-15.2 Time of motion**

(a) A motion for leave to intervene may be filed at any time after a [contested] case is initiated.

(b) If made before a [contested] case has been filed with the Office of Administrative Law, a motion for leave to intervene shall be filed with the head of the agency having jurisdiction over the case. The agency head

may rule upon the motion to intervene or may reserve decision for action by a judge after the case has been filed with the Office of Administrative Law.

(c) If made after a [contested] case has been filed with the Office of Administrative Law, a motion for leave to intervene shall be filed with the Clerk of the Office of Administrative Law.

[1:1-12.3] **1:1-15.3** Standards for intervention

(a) In ruling upon a motion to intervene, the judge shall take into consideration the nature and extent of the movant's interest in the outcome of the [contested] case, whether or not the movant's interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the [contested] case, the prospect of confusion or undue delay arising from the movant's inclusion, and other appropriate matters.

(b) In cases where one of the parties is a State agency authorized by law to represent the public interest in a [contested] case, no movant shall be denied intervention solely because the movant's interest may be represented in part by said State agency.

(c) Notwithstanding (a) above, persons statutorily permitted to intervene shall be granted intervention.

[1:1-12.4] **1:1-15.4** Notice of opportunity to intervene or participate

Where it appears to the judge that a full determination of a [contested] case may substantially, specifically and directly affect a person or entity who is not a party to the case, the judge, on motion of any party or on his or her own initiative, may order that the [clerk] Clerk or any party notify the person or entity of the proceeding and of the opportunity to apply for intervention or participation pursuant to these rules.

[1:1-12.5] **1:1-15.5** Alternative treatment of motions to intervene

Every motion for leave to intervene shall be treated, in the alternative, as a motion for permission to participate.

[1:1-12.6] **1:1-15.6** Participation; standards for participation

(a) Any person or entity with a significant interest in the outcome of a [contested] case may move for permission to participate.

(b) A motion to participate may be made at such time and in such manner as is appropriate for a motion for leave to intervene pursuant to N.J.A.C. [1:1-12.2] **1:1-15.2**. In deciding whether to permit participation, the judge shall consider whether the participant's interest is likely to add constructively to the case without causing undue delay or confusion.

(c) The judge shall determine the nature and extent of participation in the individual case. Participation shall be limited to:

1. The right to argue orally; or
2. The right to file a statement or brief; or
3. **The right to file exceptions to the initial decision with the agency head;**

or

[3.] 4. [Both] All of the [foregoing] above.

#### SUBCHAPTER [14.] 16. CONSOLIDATION OF TWO OR MORE [CONTESTED] CASES; MULTIPLE AGENCY JURISDICTION CLAIMS; DETERMINATIONS OF PREDOMINANT INTEREST

[1:1-14.1] **1:1-16.1** Motion to consolidate; when decided

(a) As soon as circumstances meriting such action are discovered, an agency head, any party or the judge may move to consolidate a [contested] case which has been transmitted to the Office of Administrative Law with any other contested case involving common questions of fact or law between identical parties or between any party to the filed [contested] case and any other person, entity or agency.

(b) This rule shall apply to [contested] cases:

1. Already filed with the Office of Administrative Law;
2. Commenced in an agency but not yet filed with the Office of Administrative Law; and
3. Commenced in an agency and not required to be filed with the Office of Administrative Law under N.J.S.A. 52:14F-8.

(c) The judge assigned to the case first transmitted to the Office of Administrative Law shall hear and rule upon the motion to consolidate.

(d) All motions to consolidate, including those involving predominant interest allegations, must be disposed of by interlocutory order prior to commencing the evidentiary hearing.

[1:1-14.2] **1:1-16.2** Form of motion; submission date

(a) A motion to consolidate shall require the parties to show cause why the matters should not be consolidated.

(b) Motions to consolidate cases which commenced in separate agencies and all replies shall include a predominant interest allegation and shall be supported by a brief and affidavits.

(c) All consolidation motions involving cases commenced in two or more agencies shall be scheduled by Office of Administrative Law for oral argument under N.J.A.C. 1:1-11.3.

(d) Motions for consolidation involving cases transmitted or to be transmitted to the Office of Administrative Law from a single agency shall be handled in accordance with N.J.A.C. [1:1-9.3.] **1:1-11.2**.

[1:1-14.3] **1:1-16.3** Standards for consolidation

(a) In ruling upon a motion to consolidate, the judge shall consider:

1. The identity of parties in each of the matters;
2. The nature of all the questions of fact and law respectively involved;
3. To the extent that common questions of fact and law are involved, the saving in time, expense, duplication and inconsistency which will be realized from hearing the matters together and whether such issues can be thoroughly, competently, and fully tried and adjudicated together with and as a constituent part of all other issues in the two cases;
4. To the extent that dissimilar questions of fact or law are present, the danger of confusion, delay or undue prejudice to any party;
5. The advisability generally of disposing of all aspects of the controversy in a single proceeding; and
6. Other matters appropriate to a prompt and fair resolution of the issues[.], **including whether a case still pending in an agency is contested or is ripe to be declared contested.**

[1:1-14.4] **1:1-16.4** Review of orders to consolidate cases from a single agency

(a) Except as provided in (b) below, orders granting or denying the consolidation of cases commenced before a single State agency shall be subject to N.J.A.C. [1:1-9.7.] **1:1-13.10**.

(b) An order consolidating any matter commenced before a single agency but not [thereofore] transmitted to the Office of Administrative Law shall be [forthwith] forwarded to the agency head for [his or her] review.

1. The agency head's review of the judge's order shall be completed no later than 45 days from the entry of the judge's order, except when, for good cause shown and upon notice to all parties, the time period is extended by the joint action of the Director of the Office of Administrative Law and the agency head. Where the agency head does not act on review of the judge's order within 45 days, the judge's order shall be deemed adopted.

[1:1-14.5] **1:1-16.5** Multiple agency jurisdiction claims; standards for determining predominant interest

(a) When a motion to consolidate pertains to contested cases filed with two or more State agencies which are asserting jurisdiction, the judge shall determine which agency, if any, has the predominant interest in the conduct and outcome of the matter. In determining this question, the following factors shall be weighed:

1. Whether more than one agency asserting jurisdiction over a common issue has jurisdiction over the issue, and if more than one agency has jurisdiction, whether the jurisdiction is mandatory for one of the agencies;
2. Whether the common issue before the two agencies is, for either agency, the sole, major or dominant issue in dispute and whether its determination would either serve to moot the remaining questions or to affect substantially their resolution;
3. Whether the allegations involve issues and interests which extend beyond the immediate parties and are of particular concern to one or the other agency;
4. Whether the claims, if ultimately vindicated, would require specialized or particularized remedial relief available in one agency but not the other;
5. Whether the common issue is clearly severable from the balance of the controversy and thus will permit non-duplicative factual and legal determinations by each agency.

[1:1-14.6] **1:1-16.6** Determination of motions involving consolidation of cases from multiple agencies; contents of order; exempt agency conduct

(a) In motions concerning multiple agencies, the judge shall initially determine the consolidation question. If consolidation is to be ordered, then a predominant interest determination must also be rendered in the consolidation order. If particular issues in the entire controversy are clearly severable, the judge's consolidation order shall specify which agency shall decide each such issue. **Motions for consolidation involving predominant interest determinations must be decided within 45 days from the date of submission.**

(b) If one agency is determined to have a predominant interest, that agency shall render the final decision on all issues within the scope of its predominant interest. The judge in the consolidation order shall specify the issues relating to the predominant issue and shall clearly identify the agency having the authority to issue a final decision on those issues.

(c) If there are requests for relief which may not be granted by the agency with the predominant interest, the judge shall in the consolidation order specify clearly which determinations by the agency with the predominant interest shall bind the agency subsequently considering any applications for relief.

(d) When an agency exempt under N.J.S.A. 52:14F-8(a) is determined to have a predominant interest in a contested case, the matter shall be heard by an administrative law judge unless the exempt agency [shall] decides, in its final order reviewing the judge's consolidation order[, whether] to have the matter heard [by an administrative law judge or] by its own personnel. If the exempt agency decides to have its own personnel hear the matter, but the hearer does not have jurisdiction over all issues within the scope of the agency's predominant interest, the hearer shall be designated a special administrative law judge as provided by N.J.S.A. 52:14F-6(b).

[1:1-14.7] **1:1-16.7** Review of orders involving consolidation of cases from multiple agencies

(a) All orders granting or denying consolidation of cases commenced before multiple agencies shall be [forthwith] forwarded by the Office of Administrative Law to the respective agency heads for their review.

(b) The agency head's review of the judge's order shall be completed no later than 45 days from the entry of the judge's order, except when, for good cause shown and upon notice to all parties, the time period is extended by the joint action of the Director of the Office of Administrative Law and the agency head. Where the agency head does not act on review of the judge's order within 45 days, the judge's order shall be deemed adopted.

(c) Agency heads considering a judge's consolidation order are encouraged to consult and coordinate with each other before issuing a final order.

[1:1-14.8] **1:1-16.8** Initial decision in cases involving a predominant interest; order of review; extension of time limits

(a) The judge in a consolidation case involving a predominant interest shall consider all the issues and arguments in the case and shall render a single initial decision in the form prescribed by N.J.A.C. [1:1-16.3] 1:1-17.1, disposing of all the issues in controversy.

(b) The initial decision shall be filed first with the agency which has the predominant interest. After rendering its final decision, the agency with the predominant interest shall transmit the record, including the initial decision and its final decision, to the other agency which may subsequently render a final decision on any remaining issues and consider any specific remedies which may be within its statutory grant of authority.

(c) Upon transmitting the record, the agency with the predominant interest shall pursuant to N.J.A.C. [1:1-16.6] 1:1-17.8 request an extension to permit the rendering of a final decision by the agency which does not have the predominant interest.

SUBCHAPTER [16.] 17. [CONCLUSIONS OF HEARING;  
PROPOSED FINDINGS; CONCLUSIONS  
AND ORDER;] INITIAL DECISION;  
EXCEPTIONS; FINAL DECISION;  
REMAND; EXTENSIONS OF TIME  
LIMITS

[1:1-16.1] Conclusion of hearing

A hearing shall be deemed concluded when a consent order or withdrawal is filed or, when a judge declares it, on the verbatim record, to have been concluded; or if a schedule has been established for the subsequent filing of briefs, statements, proposed findings of fact, conclusions of law, forms of order or other disposition, or other supplemental material, when the time established for the filing of such items has expired or when the last such item has been received by the judge, whichever is earlier. In all hearings concluded other than by consent order, withdrawal or declaration on the verbatim record, the judge shall notify all parties in writing of the date that the hearing is concluded.]

[1:1-16.2] Proposed findings; briefs, conclusions and order

(a) A judge may establish a schedule for the filing of briefs, proposed findings of fact, conclusions of law, forms of order or other disposition after evidentiary proceedings have concluded or at such earlier time as the judge may for good cause order.

(b) All proposed findings of fact, conclusions of law, forms of order or other disposition shall;

1. Be accompanied by a supporting statement or brief;
2. Be in writing and served upon all other parties; and
3. Contain adequate references, in the circumstances, to the record and to authorities relied on.

(c) In establishing a schedule, the judge shall be mindful of the need for reasonable expedition and shall except for good cause shown require the parties to conform to a schedule that may not exceed 30 days after testimony or oral argument has ended.]

[1:1-16.3] **1:1-17.1** Initial decision in contested cases

(a) [As soon as is practicable after the hearing is concluded, but in no event later than 45 days thereafter, the judge shall issue and the Clerk shall file with the agency head and immediately serve upon the parties an] **When a conference hearing, plenary hearing, telephone hearing or proceeding on the papers is not heard directly by an agency head, the judge shall issue an initial decision which shall be based exclusively on:**

1. The competent evidence and arguments presented during the course of the hearing and made a part of the record;
2. Stipulations of fact; and
3. Matters officially noticed.

(b) The initial decision shall be final in form and fully dispositive of all issues in the case.

[(c) The initial decision shall contain:

1. An appropriate caption;
2. The appearances of the parties;
3. A short statement of the nature of the proceedings;
4. Complete references to the specific statutes or regulations at issue;
5. A list of exhibits admitted in evidence which may be part of the initial decision or attached as an appendix.
6. An analysis of the facts adduced at the hearing in relation to the applicable law and covered all issues of fact and law raised in the proceedings;
7. Specific findings of contested fact which shall be designated as such and which shall not be set forth in statutory or conclusory language;
8. Specific conclusions of law based upon the findings of fact and applicable constitutional principles, statutes, and rules or regulations;
9. An appropriate order or other disposition of the entire contested case based upon the findings and conclusions;
10. A statement that the initial decision in the proceedings is forwarded to the agency head for consideration;
11. The following statement: "This recommended decision may be affirmed, modified or rejected by (the head of the agency), who by law is empowered to make a final decision in this matter. However, if (the head of the agency) does not so act in 45 days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10."

[(d)] (e) No substantive finding of fact or conclusion of law, nor any concluding order or other disposition shall be binding upon the agency head, [but rather all shall be considered recommendatory in nature] unless otherwise provided by statute[.], [these rules, or agreement between the agency head and the Director of the Office of Administrative Law.]

(d) In plenary hearings and proceedings on the papers, the initial decision shall be issued and received by the agency head as soon as practicable after the hearing is concluded, but in no event later than 45 days thereafter, unless an earlier time frame is mandated by federal or state law.

(e) In conference hearings, the initial decision shall be issued and received by the agency head as soon as practicable after the last day of evidentiary hearing, but no later than 21 days thereafter, unless an earlier time frame is mandated by federal or state law.

(f) In mediations successfully concluded by initial decision, the decision shall be issued and received by the agency head as soon as practicable after the mediation, but in no event later than 45 days thereafter.

[(e)] (g) Within 10 days after the initial decision is filed with the agency head, the Clerk shall certify the entire record with original exhibits to the agency head.

(h) Upon filing of an initial decision with the transmitting agency, the Office of Administrative Law relinquishes jurisdiction over the case.

1:1-17.2 Oral initial decision

(a) The judge may render the initial decision orally on the record before the parties in any case where the judge determines that the circumstances appropriately permit an oral decision and the questions of fact or law are sufficiently non-complex.

(b) Within 15 working days of rendering an oral decision, the decision shall be transcribed, filed with the agency head and mailed to the parties with an indication of the date of receipt by the agency head.

(c) In an oral decision, the judge shall identify the case, the parties, and the issue or issues to be decided and shall analyze the facts as they relate to the applicable law, and make findings of fact, conclusions of law and an appropriate order or disposition of the case. The decision shall include the statement at N.J.A.C. 1:1-17.3(c)12. The judge shall also explain to the parties that the decision is being forwarded to the agency head for disposition pursuant to N.J.S.A. 52:14B-10, and that exceptions may be addressed to the agency head. The judge need not specifically include in the oral decision the other material required by N.J.A.C. 1:1-17.3(c) as long as it is otherwise contained in the record.

#### 1:1-17.3 Written initial decision

(a) If an oral decision is not issued, the judge shall issue a written initial decision.

(b) The Clerk shall file the written initial decision with the agency head and shall promptly serve the written initial decision upon the parties with an indication of the date of receipt by the agency head.

(c) The written initial decision shall contain the following elements which may be combined and need not be separately discussed:

1. An appropriate caption;
2. The appearances of the parties and their representatives, if any;
3. A statement of the case;
4. A procedural history;
5. A statement of the issue(s);
6. A factual discussion;
7. Factual findings;
8. A legal discussion;
9. Conclusions of law;
10. A disposition;
11. A list of exhibits admitted into evidence; and
12. The following statement: "This recommendation decision may be affirmed, modified or rejected by (the head of the agency), who by law is empowered to make a final decision in this matter. However, if (the head of the agency) does not so act in 45 days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10."

[1:1-16.4] 1:1-17.4 Exceptions[:]; replies[:] [no motions to reconsider; motions to reopen]

(a) [Within 10 days from the receipt of the judge's initial decision, any party may file] Any party may file written exceptions [thereto in writing] within 10 days from the receipt of the judge's initial decision with the agency head and with the Clerk[, serving a copy thereof on all other parties]. A copy of the exceptions shall be served on all other parties.

(b) The exceptions shall: [specify the particular portions of the initial decision to which exception is taken; shall designate the portions of the record relied upon in support of such exceptions; and shall set out specific findings of fact, conclusions of law or dispositions proposed in lieu of those reached by the judge or in addition thereto. Exceptions to conclusions of law shall be specific, shall briefly cite the statutory provisions or principal authorities relied upon, shall set forth conclusions suggested in lieu thereof, and shall include any proposed additional conclusions. Exceptions to the judge's order or other disposition shall set forth a form of order suggested in lieu thereof. Supporting reasons for exceptions shall be submitted in the same document or in an accompanying brief. Where briefs or statements have been filed at any time during the hearings, the written exceptions may incorporate by reference relevant portions of such papers.]

1. Specify the findings of fact, conclusions of law or dispositions to which exception is taken;
2. Set out specific findings of fact, conclusions of law or dispositions proposed in lieu of or in addition to those reached by the judge;
3. Set forth supporting reasons. Exceptions to factual findings shall describe the witnesses' testimony or documentary or other evidence relied upon. Exceptions to conclusions of law shall set forth the authorities relied upon.

(c) Evidence not presented at the hearing shall not be submitted as part of an exception, nor shall it be incorporated or referred to within exceptions.

[(c)] (d) Within five days from receipt of exceptions, any party may file a reply with the agency head and with the Clerk, serving a copy thereof on all other parties. Such replies may include cross-exceptions or submissions in support of the initial decision.

(e) In all settlements, exceptions and cross-exceptions shall not be filed, unless permitted by the judge or agency head.

#### 1:1-17.5 Motions to reconsider and reopen

[(d)] (a) Motions to reconsider an initial decision are not permitted.

[(e)] (b) Motions to reopen a hearing after an initial decision has been filed must be addressed to the agency head.

(c) Motions to reopen the record before an initial decision is filed must be addressed to the judge and may be granted only for extraordinary circumstances.

#### [1:1-16.5] 1:1-17.6 Final decision

(a) Within 45 days after the receipt of the initial decision, the agency head may enter an order or a final decision accepting rejecting or modifying the initial decision. Such an order or final decision shall be served upon the parties and the Clerk forthwith.

(b) An order or final decision rejecting or modifying the findings of fact in the initial decision shall be based upon substantial evidence in the record and matters officially or modifying the initial decision shall specify in clear and sufficient detail the nature of the rejection or modification, the reasons for it, the specific evidence of record at hearing and interpretation of law upon which it is based[,] and the precise changes in result or disposition caused by the rejection or modification.

[(c)] An agency head may enter an order remanding a contested case to the Office of Administrative Law for further action on issues or arguments not previously raised or incompletely considered. The order of remand shall specifically state the reason and necessity for the remand, the issues or arguments to be considered, the scope of these issues or arguments, and their relationship to the issues and arguments already considered. The judge shall hear and render an initial decision on the remanded matters. Where a party or the judge questions the necessity or propriety of the remand, the judge may also make findings and recommendations to the agency head on the issue or questions raised.]

[(d)] (c) If an agency head does not reject or modify the initial decision within 45 days and unless the period is extended as provided by [statute,] N.J.A.C. 1:1-17.8, the initial decision shall become a final decision.

#### 1:1-17.7 Remand; procedure

(a) An agency head may enter an order remanding a contested case to the Office of Administrative Law for further action on issues or arguments not previously raised or incompletely considered. The order of remand shall specifically state the reason and necessity for the remand, the issues or arguments to be considered, the scope of these issues or arguments, and their relationship to the issues and arguments already considered. The remand order shall be attached to a N.J.A.C. 1:1-7.2 transmittal form and returned to the Office of Administrative Law Clerk along with the case record.

(b) The judge shall hear the remanded matter and render an initial decision. Where a party or the judge questions the necessity or propriety of the remand, the judge may also make findings and recommendations to the agency head on the questions raised.

#### [1:1-16.6] 1:1-17.8 Extensions of time limits

[(a)] Upon certification by both the Director of the Office of Administrative Law and the agency head that good cause exists, the time limit for preparation of the initial decision, for filing exceptions and replies, and for issuing an order or final decision may be extended.

(b) Requests for extension of any period must be submitted prior to the expiration of the period.

(c) A copy of any Form of Order or request for extension of any period must be served upon each party in the case.

(d) Extensions shall not be granted if inattention or procrastination cause delay, but shall be granted if the delay is attributable to honest mistake, accident, or any cause compatible with proper diligence.]

(a) Time limits for filing an initial decision, filing exceptions and replies and issuing a final decision may be extended for good cause.

(b) A request for extension of any time period must be submitted no later than the day on which that time period is to expire. This requirement may be waived only in case of emergency or other unforeseeable circumstances.

(c) Requests to extend the time limit for initial decisions shall be submitted to the Director of the Office of Administrative Law. If the Director approves the request, he or she shall forward a proposed order to the transmitting agency head and serve copies on all parties. If the agency head approves the request, he or she shall sign the proposed order and return it to the Director, who shall issue the order and cause it to be served on all parties.

(d) Requests to extend the time limit for exceptions and replies shall be submitted in writing with a proposed form of extension order to the transmitting agency head and served on all parties. If the agency head approves the request, he or she shall sign and issue the order and cause it to be served on all parties and the Director of the Office of Administrative Law.

(e) To extend the time limit for filing a final decision, the transmitting agency head shall forward a proposed order to the Director of the Office of Administrative Law and serve copies on all parties. If the Director concurs in granting the extension, he or she shall sign and issue the order and cause it to be served on all parties.

(f) An order granting an extension must be issued no later than 10 days after the request for an extension is received.

(g) Any order granting an extension must establish a new time for filing the decision or exceptions and replies. Extensions for filing initial or final decisions may not exceed 45 days from the original decision due date. Additional extensions of not more than 45 days each may be granted only in case of extraordinary circumstances.

#### SUBCHAPTER [17.] 18. SETTLEMENTS AND WITHDRAWALS

##### [1:1-17.1] 1:1-18.1 Settlements

(a) When the parties to a [contested] case wish to settle the matter [by consent], the judge shall require the parties[:] to disclose the full settlement terms:

1. In writing, by consent order [To submit a letter] or stipulation signed by [both] all parties or their representatives [containing the terms of the settlement]; or

2. [To express the settlement terms] Verbally, by their representatives and the parties under oath on the record.

(b) If the judge determines that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, and does not determine that it is inconsistent with the public interest, the judge shall [enter an order concluding the contested case.] issue an initial decision incorporating the full settlement terms and approving the settlement.

(c) On the judge's motion [a motion of his own] or on motion of a party, the judge may [review the settlement and] require evidence on the record to determine whether the settlement terms are consistent with the public interest.

[(d) The judge shall set forth the settlement terms in or attach them to the order concluding the contested case and the Clerk shall serve a copy upon each of the parties.

(e) Where an agency order is required by law or requested by the parties for purposes of implementing or recording a settlement, the matter must proceed in accordance with this subchapter and may not be withdrawn pursuant to N.J.A.C. 1:1-17.2.

(f) Where the agency transmitting the contested case is a party to the case, and the agency consents to the settlement terms, the order concluding the contested case shall be deemed the final decision in the case.

(g) Where the agency transmitting the case is not a party to the case, the settlement terms and order shall be deemed the initial decision of the judge in the case.]

##### [1:1-17.2] 1:1-18.2 Withdrawals

(a) [Other than for a settlement where an agency order is required by law or requested by the parties (see N.J.A.C. 1:17-1(d)), a] Any party may withdraw a request for a hearing [at any time for any reason until testimony commences at the evidentiary hearing by notifying the Clerk or judge. A party may withdraw a request for hearing after commencement of testimony at the evidentiary hearing upon approval of the judge.] or a defense raised which shall be processed in accordance with (b) or (c) below. Parties shall not use the withdrawal process in those cases where the parties have agreed between themselves to settle the matter. All settlements shall be handled in accordance with N.J.A.C. 1:1-18.1. Withdrawals shall only be requested where a party voluntarily abandons a request for action or relief or a defense to a request for action or relief.

(b) Before commencement of testimony at the evidentiary hearing, a party may withdraw a request for a hearing or a defense raised by written request to the Clerk, with a copy to all parties, setting forth the reason for the withdrawal. Upon receipt of such request, the judge assigned to the case shall, except in those instances where he or she determines that the withdrawal should more properly be handled as a settlement under N.J.A.C. 1:1-18.1, enter an initial decision granting the withdrawal. The decision shall specify that the party requesting the withdrawal has relinquished the right to take action against the other party or parties or to defend against the action of the other party or parties and shall contain an appropriate disposition of the case.

(c) After commencement of testimony at the evidentiary hearing, a request for withdrawal shall be made by motion pursuant to N.J.A.C. 1:1-11.1 et seq. and shall set forth the reason for the withdrawal. Upon receipt of the motion, the judge shall determine whether to permit the withdrawal and may deny withdrawal by order under N.J.A.C. 1:1-13.9 or issue an initial decision approving the withdrawal in accordance with N.J.A.C. 1:1-18.2(b).

[(b)] (d) Upon [notification of] entry of a decision approving a withdrawal, the Clerk shall [include in the case file the fact of withdrawal and shall] return the matter to the agency [for any further agency action permitted by statute].

[(c)] (e) After a decision approving withdrawal has been entered, [the Clerk has returned the matter to the agency,] a party shall address to the agency head any motion to reopen a withdrawn case.

#### SUBCHAPTER 19. REPRESENTATION

##### [1:1-3.7] 1:1-19.1 [Appearance and] Representation

[(a)] A party may represent him or herself, be represented by an attorney authorized to practice law in this State, or, subject to N.J.A.C. [1:1-3.12] 1:1-19.4 and [N.J.A.C. 1:1-3.13] 1:1-19.5, be represented or assisted by a non-lawyer permitted to make an appearance in a contested case by [R.] New Jersey Court Rule R. 1:21-1(e) or by a law graduate or student pursuant to R. 1:21-3(b).

##### 1:1-19.2 Out-of-state attorneys; admission procedures

[(b)] (a) An attorney from any other jurisdiction, of good standing there, may, at the discretion of the judge, be admitted for the one occasion to participate in the proceeding in the same manner as an attorney of this State by complying with the following procedures:

1. An attorney authorized to practice in New Jersey, pursuant to New Jersey [Supreme] Court Rule R. 1:21-1, may move the admission for the one occasion of an attorney from another jurisdiction who is in good standing in the other state. Forms are available from the Office of Administrative Law for this purpose.

2. Each motion seeking admission for the one occasion shall be served [in] on all parties and have attached a supporting affidavit, signed by the out-of-state attorney, which shall state that payment has been made to the Client's Security Fund and Ethics Financial Committee. The affidavit shall state how he or she satisfies each of the conditions for admission, including good cause, set forth in R. 1:21-2(a). The out-of-state attorney shall also agree in the affidavit to comply with the dictates of R. 1:21-2(b).

3. An annual payment made to the Client's Security Fund and Ethics Financial Committee shall entitle the out-of-state attorney to appear in subsequent matters during the payment year, provided the out-of-state attorney otherwise qualifies for admission.

4. An order granting admission shall set forth the limitations upon admission established in R. 1:21-2(b).

5. A judge may, at any time during the proceeding and for good cause shown, revoke permission for the attorney to appear.

##### 1:1-19.3 Conduct of lawyers

In any case where the issue of an attorney's ethical or professional conduct is raised, the judge before whom the issue has been presented shall consider the merits of the issue raised and make a ruling as to whether the attorney may appear or continue representation in the matter. The judge may disqualify an attorney from participating in a particular case when disqualification is required by the Rules of Professional Conduct or the New Jersey Conflict of Interest Law. If disciplinary action against the attorney is indicated, the matter shall be referred to the appropriate disciplinary body.

[1:1-3.12] 1:1-19.4 Representation [and assistance] by non-lawyers; authorized situations, applications, [notice of appearance,] approval procedures[, limitations, practice requirements]

(a) In conformity with New Jersey Court Rule R. 1:21-1(e) [of the Rules Governing the Courts of the State of New Jersey], the following non-lawyers may apply for permission to represent [or assist] a party to a contested case hearing:

1. Persons whose appearance is required by Federal law;
2. State agency employees;
3. County or municipal welfare agency employees;
4. Legal service paralegals or assistants;
5. Close corporation principals; and
6. Union representatives in Civil Service cases.

(b) The non-lawyer applicants mentioned in (a) above may apply for permission to appear by supplying the following information and by complying with the following procedures:

1. Oral applications at the hearing may be made in [cases transmitted to the Office of Administrative Law by the] Division of Public Welfare, Division of Medical Assistance and Health Services and Division of Youth and Family Services cases.

i. At the hearing, the non-lawyer applicant shall state that he or she is not a suspended or disbarred attorney and that he or she is not receiving a fee for the appearance.

ii. [At the hearing, the non-lawyer applicant seeking to represent a recipient or applicant for services shall state why the Federal law requires that his or her appearance be permitted.] At the hearing, the judge shall determine that the non-lawyer applicant seeking to represent a recipient or applicant for services fulfills the appearance requirements of federal law.

iii. At the hearing, the non-lawyer applicant seeking to represent a county or municipal welfare agency shall state that he or she is an [employee of the welfare agency.] **agency staff person with knowledge of the matter in controversy**, has been assigned to represent the agency in the case and that the county or municipal counsel is not providing representation in the particular matter. The non-lawyer applicant shall also state his or her position at the agency and the name, title, business address and telephone number of his or her supervisor [and shall explain his or her special expertise or experience in the matter].

iv. At the hearing, a non-lawyer applicant seeking to represent the Division of Public Welfare, **the Division of Medical Assistance and Health Services** or the Division of Youth and Family Services shall state how he or she satisfies the requirements for representation set forth in (d)2i, below.

[v. A non-lawyer applicant seeking to represent the Division of Medical Assistance and Health Services shall comply with the requirements of (b)2 below and may not make an oral application for permission to represent the Agency.

vi. A non-lawyer, otherwise qualified under R. 1:21-1(e) and N.J.A.C. 1:1-3.12, seeking to represent a party not specifically mentioned above shall comply with the applicable procedures specified in (b)2 or 3 below.]

2. A **written Notice of Appearance/Application** on forms supplied by the Office of Administrative Law shall be required in cases where a non-lawyer employee seeks to represent a State agency; **in Civil Service cases, where a union representative seeks to represent a state, county or local government employee; where a non-lawyer seeks to represent a party in a special education hearing; where a principal seeks to represent a close corporation, and where a non-lawyer from a legal services program seeks to represent an indigent. A non-lawyer from a legal services program seeking to represent a recipient or applicant for services in Division of Public Welfare, Division of Medical Assistance and Health Services and Division of Youth and Family Services cases may make oral application to represent the recipient or applicant by complying with the requirements of (b)1 above.**

i. [The represent a State agency, the Notice shall be signed by the non-lawyer applicant, filed with the Clerk of the Office of Administrative Law no later than 10 calendar days prior to the scheduled hearing date and served on all parties. The] **For non-lawyer employees seeking to represent a state agency, the Notice shall include a statement that the non-lawyer is an employee of the State agency he or she seeks to represent; his or her position at the agency; his or her supervisor at the agency; his or her supervisor's position, business address and telephone number; and an explanation of his or her special expertise or experience in the matter in controversy. The Notice shall also contain a statement, signed by a Deputy Attorney General for the State agency that the Attorney General will not provide representation for the agency in the case.**

ii. For non-lawyers from legal services programs, the Notice [of Appearance shall be signed by the non-lawyer applicant, filed with the Clerk no later than five calendar days from receipt of the hearing notice and served on all parties. The Notice] shall include a statement that he or she is a paralegal or legal assistant; the name and address of the Legal Services Program of which he or she is a part; **and the name, business address, telephone number and signed authorization of a Legal Services attorney who supervises the applicant;** and a statement that the represented party is indigent].

iii. **The non-lawyer union representative shall include in his or her Notice a statement that he or she is an authorized representative of a labor organization; that the labor organization is the duly authorized representative of the represented employee's collective bargaining unit; and the name, title, business address and telephone number of his or her supervisor.**

[3. Written applications shall be made in the following cases. Such applications may be in letter form, and shall be signed by the non-lawyer applicant, filed with the Clerk of Office of Administrative Law no later than 10 calendar days prior to the scheduled hearing date and served on all parties.]

[i.] iv. In special education hearings the non-lawyer applicant shall include in his or her [written application] **Notice** an explanation of how he or she satisfies the Federal and State requirements for non-lawyer representation.

[ii.] v. In cases where a principal seeks to represent a close corporation, the non-lawyer applicant shall include in his or her [written application] **Notice** a statement that he or she is a principal[, his or her position in the corporation; and a copy of the incorporation papers or other papers documenting the close nature of the corporation, describing the corporation's activities and listing the non-lawyer as a principal.] **and a description of the close nature of the corporation.**

[iii. In Civil Service cases, where a union representative seeks to represent a state, county or local government employee, the non-lawyer applicant shall include in his or her written application, a statement that he or she is an authorized representative of a labor organization; that the labor organization is the duly authorized representative of the employee's collective bargaining unit and the name, title, business address and telephone number of his or her supervisor.]

[4.] vi. All non-lawyer applicants [whether] filing a Notice of Appearance/**Application** [under (b)2 above or applying in writing for permission to represent a party in a contested case] shall state in the Notice [or in the written or oral application] that he or she is not a disbarred or suspended attorney and is not receiving a fee for the appearance.

vii. **The Notice of Appearance/Application must be signed by the non-lawyer applicant. Notices shall be filed with the Clerk and served on all parties no later than 10 days prior to the scheduled hearing date.**

[(c)] viii. [Upon receiving a timely Notice of Appearance or written application by a non-lawyer seeking permission to represent a party in a contested case, the Clerk shall review the Notice or application.] The Clerk may require the applicant to supply additional information or explanation of the items specified [in (b)2 and 3] above as applicable, or may require the applicant to supply evidence of the statements contained in the [the applicant's] receipt of the **Notice**, the non-lawyer's [application] **request** to appear at the hearing shall be deemed approved. When the Clerk believes that [an application] a **Notice** presents a significant legal issue relating to representation rights, the Clerk will notify the parties that the presiding judge will determine the matter at or before the hearing.

[(d)] In order to simplify and expedite the application process, a State agency, a legal services program or labor organization may submit to the Clerk permanent written applications upon forms supplied by the Office of Administrative Law for those non-lawyers who qualify under N.J.A.C. 1:1-3.12 and who will regularly appear at hearings. Thereafter, upon being assigned to represent a party in a particular case, the non-lawyer representative shall promptly notify the other party and the Clerk of the Office of Administrative Law of his or her appearance and include in the notification the following:

1. Non-lawyer representatives of State agencies shall be required to state that the Attorney General's office has declined representation in the case.

2. Non-lawyer union representatives shall be required to state that the labor organization is the duly authorized representative of the represented employee's collective bargaining unit.

3. Non-lawyers from legal services programs shall be required to state that the represented party qualifies for legal services.]

**1:1-19.5 Conduct of non-lawyer representatives; limitations on practice**

[(e)] (a) The presiding judge, unless precluded by Federal law, may determine [after being assigned to the case and] at any time during the proceeding that a specific case is not appropriate for representation by a non-lawyer representative. The judge's determination may be based either on the lack of appropriate experience or expertise of the particular non-lawyer representative, or the complexity of the legal issues or other factors which make the particular case inappropriate for a non-lawyer representative. The judge shall implement a determination to preclude non-lawyer representation by informing the parties of the decision and the reasons therefor[e]. With respect to a county, local or state agency or a close corporation, the judge may require the party to obtain legal representation. With respect to an individual, the judge may require the individual **either** to obtain a new non-lawyer, to represent himself or herself or to obtain legal representation.

[(f)] (b) The presiding judge may revoke any non-lawyer's right to appear in a case if and when the judge determines that a material statement is incorrect in any Notice of Appearance/**Application** or in any [written or] oral application by a non-lawyer [or party concerning representation or assistance by the non-lawyer].

[(g)] (c) Non-lawyer representatives [and assistants] shall be subject to the [Rules of Practice of the Office of Administrative Law and to] **Uniform Administrative Procedure Rules, including** the sanctions provided in N.J.A.C. [1:1-3.5.] **1:1-13.4. A non-lawyer may not be precluded from providing representational services solely because the non-lawyer is also appearing as a witness in the matter.** If the judge determines that an incorrect statement in an oral [or written] application or Notice of Appearance/**Application** was an intentional misstatement, or that the non-lawyer representative has unreasonably failed to comply with any order of a judge or with any requirement of this chapter, the judge may impose the sanctions provided under N.J.A.C. [1:1-3.5.] **1:1-13.4**, which may include:

1. In the case of a State, county or local agency employee, reporting any inappropriate behavior to the agency for possible disciplinary action:

2. A determination by the presiding judge that the non-lawyer representative shall be excluded from a particular hearing; and,

3. A recommendation by the presiding judge to the [Director of the Office of Administrative Law] **agency head** that a particular non-lawyer representative be permanently excluded from administrative hearings before that agency.

[(h)] (d) In general, a non-lawyer representative [or assistant] shall be permitted at the hearing to submit evidence, speak for the party, make oral arguments, and conduct direct examinations and cross-examinations of witnesses.

1. In the interest of a full, fair, orderly and speedy hearing, the judge may at any time condition, limit or delineate the type or extent of representation [or assistance] which may be rendered by a non-lawyer. Conditions or limits may include:

i. Requiring any examination and cross-examination by the non-lawyer to be conducted through the judge;

ii. Requiring questions from the non-lawyer to be presented to the judge prior to asking;

iii. Requiring the party to speak for him or herself; or

iv. Revoking the right of the non-lawyer to appear if the judge finds that the proceedings are being unreasonably disrupted or unduly delayed because of the non-lawyer's participation.

[1:1-3.13] **1:1-19.6** Appearance without representation: State agencies or county or municipal welfare agencies

(a) In those cases where a State agency or a county or municipal welfare agency does not send a representative who has been approved under N.J.A.C. [1:1-3.12] **1:1-19.4** to a hearing, but merely rests its case on papers and/or on witnesses presented to the judge:

1. The State agency shall include in the transmittal form a statement which verifies the agency's intention to proceed without a representative qualified under N.J.A.C. [1:1-3.12] **1:1-19.4** and lists the papers and/or witnesses upon which the agency intends to rely.

2. The judge shall, where appropriate, accept into the hearing record the agency's papers and/or the witnesses' testimony. In the interests of developing a full hearing record of the dispute, the judge may, where appropriate, permit a witness who does not qualify as an agency representative, under N.J.A.C. [1:1-3.12,] **1:1-19.4**, to ask questions through the judge, make statements in response to other witnesses' testimony, or to offer documents in his or her own name. However, the judge need not permit a witness who does not qualify as an agency representative under these rules to conduct the examination or cross-examination of witnesses.

## SUBCHAPTER 20. MEDIATION BY THE OFFICE OF ADMINISTRATIVE LAW

### 1:1-20.1 Conduct of mediation

(a) Mediation shall be conducted in accordance with the following procedures:

1. All parties to the mediation shall make available for the mediation a person who has authority to bind the party to a mediated settlement.

2. The Office of Administrative Law shall supply the parties with a list containing not less than six administrative law judges (ALJs) as suggested mediators. Each party may strike two ALJs from the list and the Office of Administrative Law will not assign any ALJ who has been stricken from the list to conduct the mediation. The Office of Administrative Law shall notify the parties of the assigned mediator.

3. All parties must agree in writing to the following:

i. Not to use any information gained solely from the mediation in any subsequent proceeding;

ii. Not to subpoena the mediator for any subsequent proceedings;

iii. Not to disclose to any subsequently assigned ALJ the content of the mediation discussion;

iv. To mediate in good faith; and

v. That any agreement of the parties derived from the mediation shall be binding on the parties and will have the effect of a contract in subsequent proceedings.

4. The mediator shall, within 10 days of assignment, schedule a mediation at a convenient time and location.

5. If any party fails to appear at the mediation, without explanation being provided for the nonappearance, the mediator shall return the matter to the Clerk for scheduling a hearing and, where appropriate, may consider sanctions under N.J.A.C. 1:1-13.4

6. The mediator may at any time return the matter to the Clerk and request that a hearing be scheduled before another judge.

7. No particular form of mediation is required. The structure of the mediation shall be tailored to the needs of the particular dispute. Where helpful, parties may be permitted to present any documents, exhibits, testimony or other evidence which would aid in the attainment of a mediated settlement.

(b) In no event shall mediation efforts continue beyond thirty days from the date of the first scheduled meditation unless this time limit is extended by agreement of all the parties.

### 1:1-20.2 Conclusion of mediation

(a) If the transmitting agency is a party to the mediation, successful mediation shall be concluded by a settlement agreement.

(b) If the transmitting agency is not a party, successful mediation shall be concluded by initial decision.

(c) If mediation does not result in agreement, the matter shall be returned to the Clerk for scheduling appropriate subsequent proceedings.

## SUBCHAPTER 21. UNCONTESTED CASES IN THE OFFICE OF ADMINISTRATIVE LAW

### 1:1-21.1 Transmission to the Office of Administrative Law

(a) Any agency head may request under N.J.S.A. 52:14F-5(o) the assignment of an administrative law judge to conduct an uncontested case, including rule making and investigatory hearings. Public or investigatory hearings conducted pursuant to a rulemaking shall proceed in accordance with N.J.S.A. 52:14B-4(g). The agency head may make such a request by letter and by completing the applicable portions of an N.J.A.C. 1:1-7.2 transmittal form.

(b) The letter of request and transmittal form shall be filed with the Clerk of the Office of Administrative Law, together with any attachments, after all pleadings and notice requirements have been concluded.

### 1:1-21.2 Discovery

(a) Unless other discovery arrangements are requested by the transmitting agency and agreed to by the Director of the Office of Administrative Law, discovery in uncontested cases shall consist of the following:

1. If an agency or a county/local governmental entity is a party to an uncontested case hearing, and the subject of the case is the county/local entity's or agency's action, proposed action or refusal to act, a party shall be permitted to review the entity's or agency's relevant file or files on the matter. Copies of any document in the file or files shall be provided to the party upon the party's request and for a reasonable copying charge. The agency or county/local entity may refuse to disclose any document subject to a bona fide claim of privilege.

2. If the subject of an uncontested case hearing is not a county/local entity's or agency's action, proposed action or refusal to act, each party shall provide each other party copies of any documents and a list with names, addresses and telephone numbers of any witnesses including experts which the party intends to introduce at the hearing. A summary of the testimony expected to be provided by each witness shall be included. These items shall be exchanged at least five days prior to the hearing, unless the judge determines that the information could not reasonably have been disclosed within that time.

(b) Any discovery other than that permitted in (a)1. and 2. above shall be by motion to the judge and for good cause shown.

(c) The hearing date shall not be adjourned to permit discovery.

### 1:1-21.3 Representation

In uncontested cases conducted by the Office of Administrative Law, representation shall not be regulated by N.J.A.C. 1:1-19.1 et seq.

### 1:1-21.4 Conduct of uncontested cases

(a) Unless other arrangements are requested by the transmitting agency and agreed to by the Director of the Office of Administrative Law, uncontested cases shall proceed in the following manner:

1. Uncontested cases shall begin with the judge reading the case title and the docket number, asking the representatives or parties present to state their names for the record and stating briefly the matter in dispute. The judge shall also, unless all parties are represented by counsel or otherwise familiar with the procedures, state the procedural rules for the hearing. The judge may also permit any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing to be entered into the record.

2. In a sequence determined by the judge, each party to the proceeding shall be permitted to make a presentation setting forth the factual and/or legal basis for its position. When the parties are disputing the facts, the judge shall administer an oath to any party who wishes to make a presentation. The judge may also permit the parties to ask questions, either at the conclusion of each presentation or at the conclusion of all presentations, in the manner and to the extent that he or she determines most suitable.

3. Subject to a bona fide claim of privilege, documents or other tangible items or the written statements of an individual may be entered into the record if they are helpful to an understanding of the situation.

4. No rules of evidence apply to these proceedings.

5. Proposed findings of fact, conclusions of law, briefs, forms of order or other dispositions may be submitted prior to the beginning of the hearing. Such documents may not be accepted thereafter, nor required of the parties at any time unless all parties agree to provide such submissions and the time for issuing the judge's report is not extended.

6. The proceeding shall be deemed concluded on the date the judge determines that no further presentations under (2) above shall be necessary.

#### 1:1-21.5 Report

(a) In uncontested cases, the judge shall issue a report which shall deal with each issue presented. The report shall explain the subject matter of the proceeding and the position of each party, shall recommend a course of action and shall set forth the factual or legal basis for the recommendation.

(b) The report may be rendered in writing or orally on the record at the hearing before the parties. If the report is rendered orally, it shall be transcribed and filed with the agency head and mailed to the parties.

(c) The report shall be issued within 45 days after the hearing is concluded unless expedition is required.

#### 1:1-21.6 Exceptions and cross-exceptions

In uncontested cases exceptions and cross-exceptions shall not be permitted.

#### 1:1-21.7 Extensions

Requests for an extension of any time limit associated with an uncontested case shall be taken to the transmitting agency head.

### CHAPTERS 2. THROUGH 6. (RESERVED)

#### CHAPTER 6A SPECIAL EDUCATION PROGRAM

##### SUBCHAPTER 1. APPLICABILITY

(No change.)

##### SUBCHAPTER 2. COMMENCEMENT OF MATTER

1:6A-2.1 Commencement of matter by a board of education, public agency, parent or guardian; notice of action  
(No change.)

1:6A-2.2 Hearing request by parent, guardian, board of education or public agency

(a) (No change.)

(b) When a board or public agency has failed to issue a notice of action pursuant to N.J.A.C. 1:6A-2.1(a)2, and a parent or guardian has requested a hearing, the board or public agency shall issue a notice no later than five days from receiving notice of the hearing request. In addition the board may be subject to appropriate sanctions under N.J.A.C. [1:1-3.5.] 1:1-13.7

(c)-(e) (No change.)

##### SUBCHAPTER 3. EMERGENCY RELIEF, SETTLEMENT AND SCHEDULING OF HEARING

(No change.)

##### SUBCHAPTER 4. HEARING

1:6A-4.1 Procedures for hearing  
(No change.)

1:6A-4.2 Representation

(a) (No change.)

(b) A non-lawyer seeking to represent a party shall comply with the application process contained in N.J.A.C. [1:1-3.12] 1:1-19.4 and shall be bound by the [approval procedures,] limitations and practice requirements contained [therein.] in N.J.A.C. 1:1-19.5.

1:6A-4.3 Interpreters  
(No change.)

1:6A-4.4 Independent educational evaluation  
(a)-(b) (No change.)

[1:6A-4.5 Presumption of authenticity

(a) The authentication requirements and criteria in N.J.A.C. 1:1-15.9 shall not apply in a special education hearing.

(b) Any writing offered into evidence which has been disclosed to each other party at least five days prior to the hearing shall be presumed to be authentic.

(c) At the hearing, either a party or the judge may raise questions of authenticity.

(d) Where a genuine question of authenticity is raised at hearing, the judge may require some authentication of the questioned document. For these purposes, the judge may accept a submission of proof, in the form of an affidavit, certified document or other similar proof, no later than 10 days from the date of the hearing.]

### SUBCHAPTER 5. DECISION AND APPEAL

(No change.)

#### CHAPTER 7 DEPARTMENT OF ENVIRONMENTAL PROTECTION EMERGENCY WATER SUPPLY ALLOCATION PLAN CASES

##### SUBCHAPTER 1. APPLICABILITY

1:7-1.1 Applicability

The rules in this chapter shall apply to hearings arising under N.J.A.C. 7:19A-1.1 et seq. concerning the denial of an application for a hardship exemption from water rationing or the ban on adjustable water uses. [To the extent that these Rules of Special Applicability are inconsistent with the Uniform Administrative Procedure Rules (UAPR) contained in N.J.A.C. 1:1-1.1 et seq., these rules shall apply.]

##### SUBCHAPTER 2. THROUGH SUBCHAPTER 6. (Delete entire text.)

##### SUBCHAPTER 2. PRETRANSMISSION SETTLEMENT EFFORTS

1:7-2.1 Agency conference; failure to reach settlement

(a) In a case dealing with an application for a hardship exemption from water rationing or the ban on adjustable water uses, the Department of Environmental Protection (DEP) shall attempt to settle the dispute through appropriate conferences within 30 days of receiving a hearing request.

(b) If settlement is not reached, the parties shall use the conference to prepare issues and evidence for the hearing, and to determine any discovery needs.

(c) At or immediately after the conference, DEP shall supply the applicant with any materials requested pursuant to N.J.A.C. 1:7A-4.1 (Discovery).

(d) If settlement is not reached, DEP shall transmit the case to the Office of Administrative Law, including all documents upon which the Water Emergency Task Force based its decision to deny the hardship exemption.

##### SUBCHAPTER 3. CERTIFICATION

1:7-3.1 Certification

(a) The applicant may return a completed certification to the Clerk pursuant to N.J.A.C. 1:1-13.8.

(b) The certification shall explain why the exemption is necessary to avoid extraordinary hardship and why no reasonable alternative exists other than to grant the exemption.

##### SUBCHAPTER 4. DISCOVERY

1:7-4.1 Discovery

(a) Discovery shall be limited to the records of DEP including all documents relied upon by the Water Emergency Task Force with respect to the case.

(b) DEP shall supply the applicant with a copy of all discovery at or forthwith after the settlement conference.

##### SUBCHAPTER 5. IN-PERSON AND TELEPHONE HEARINGS

1:7-5.1 In-person hearings; telephone hearings

If an in-person or telephone hearing is held, as provided by N.J.A.C. 1:1-13.8, such proceeding shall be conducted pursuant to the Uniform Administrative Procedure Rules at N.J.A.C. 1:1-1 et seq.

### CHAPTERS 8. AND 9. (RESERVED)

#### CHAPTER 10 PUBLIC WELFARE HEARINGS

##### SUBCHAPTER 1. APPLICABILITY

(No change.)

SUBCHAPTER 2. (RESERVED)

SUBCHAPTER 3. (RESERVED)

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. (RESERVED)

SUBCHAPTER 6. (RESERVED)

SUBCHAPTER 7. (RESERVED)

SUBCHAPTER 8. [HEARINGS] SCHEDULING; CLERK'S NOTICES; ADJOURNMENTS

(No change.)

SUBCHAPTER [11.] 9. DISCOVERY

[1:10-11.1]1:10-9.1 Discovery

(No change.)

SUBCHAPTER 10. (RESERVED)

SUBCHAPTER [9.] 11. CONTINUED ELIGIBILITY; EMERGENCY FAIR HEARINGS

[1:10-9.1]1:10-11.1 Eligibility for continued benefits in food stamp cases

(No change.)

[1:10-9.2]1:10-11.2 Emergency fair hearings in AFDC or General Assistance cases

(No change.)

SUBCHAPTER 12. (RESERVED)

SUBCHAPTER [3.] 13. CONDUCT OF CONTESTED CASES

[1:10-3.1]1:10-13.1 Representation at hearing

(a) An applicant or recipient may appear at a proceeding without legal representation or may be represented by an attorney or by a relative, friend or other spokesperson pursuant to the procedures set forth in N.J.A.C. [1:1-3.12.] 1:1-19.4; 7 C.F.R. 273.15(c)(4); 45 C.F.R. 205.10(a)(3)(iii); 7 C.F.R. 273.15(d)(3)(ii)(D); 7 C.F.R. 273.15(p)(2).

[1:10-3.2]1:10-13.2 Attendance at hearing

(No change.)

SUBCHAPTER 14. (RESERVED)

SUBCHAPTER 15. (RESERVED)

SUBCHAPTER 16. (RESERVED)

SUBCHAPTER [16.] 17. DECISIONS

[1:10-16.1]1:10-17.1 Initial decisions (other than emergency hearing matters)

(No change.)

[1:10-16.2]1:10-17.2 Exceptions

If the parties wish to take exception to the initial decision, such exception must be submitted in written form to the Clerk of the OAL, the Director of the DPW and to all parties. The exceptions must be received by the DPW no later than five business days after receipt of the initial decision. No replies and cross-exceptions shall be permitted.

SUBCHAPTER [17.] 18. SETTLEMENTS

[1:10-17.1]1:10-18.1 Division of Public Welfare settlements

(No change.)

CHAPTER 10A  
DEPARTMENT OF CORRECTIONS  
INMATE DISCIPLINE CASES

SUBCHAPTER 1. APPLICABILITY

(No change.)

SUBCHAPTER 2. DEFINITIONS

(No change.)

SUBCHAPTER 3. THROUGH SUBCHAPTER 6. (RESERVED)

SUBCHAPTER 7. FILING AND TRANSMISSION

1:10A-7.1 Transmission of discipline cases by the Department of Corrections to the Office of Administrative Law

(a) The Department shall attach to a completed transmittal form, described in N.J.A.C. [1:1-5.2(a)] 1:1-7.2(a), a copy of the change, the hearing officer's and superintendent's adjudications, the inmate's appeal to the superintendent containing exceptions to the hearing officer's adjudication and any documents relating to an application for a stay of administrative sanctions.

(b) In addition to the information required by N.J.A.C. [1:1-5.2(a)] 1:1-7.2(a), the Department shall ensure that the transmittal provides the names and addresses of the inmate's representative and the superintendent's representative, if known; and the current location of the inmate.

SUBCHAPTER 8. SCHEDULING[:]; CLERK'S NOTICES

(No change.)

SUBCHAPTER 9. DISCOVERY

(No change.)

SUBCHAPTER 10. SUBPOENAS

(No change.)

SUBCHAPTER 11. MOTIONS

(No change.)

SUBCHAPTER 12. PREHEARING CONFERENCES AND PROCEDURES

(No change.)

SUBCHAPTER 13. CONDUCT OF CASES

1:10A-13.1 De novo hearings

(No change.)

1:10A-13.2 Closed hearings

(No change.)

1:10A-13.3 Sealing the record

(No change.)

1:10A-13.4 Verbatim record of proceedings; sound recording; requesting transcript

(No change.)

1:10A-13.5 Representation; entry of appearance

(a) The inmate may represent him or herself or may be represented by an attorney authorized to practice law in this State, including a Public Defender, or by a law student pursuant to R. 1:21-3[(c)] (b). The superintendent may be represented pursuant to N.J.A.C. [1:1-3.12(a)2] 1:1-19.4(a)2, or by a Deputy Attorney General or by a law assistant pursuant to R. 1:21-3[(c)](b).

(b) (No change.)

1:10A-13.6 Failure to appear

(No change.)

SUBCHAPTER 14. EVIDENCE

(No change.)

SUBCHAPTER 15. AND SUBCHAPTER 16. (RESERVED)

SUBCHAPTER 17. DECISION

(No change.)

SUBCHAPTER 18. (RESERVED)

CHAPTER 11  
INSURANCE FILING HEARINGS

SUBCHAPTER 1. APPLICABILITY

(No change.)

SUBCHAPTERS 2. THROUGH [14.] 13. (RESERVED)

SUBCHAPTER [15.] 14. EVIDENCE

[1:11-15.1]1:11-14.1 Evidence

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

(c) All written testimony which meets the requirements of N.J.A.C. [1:1-15.1] 1:1-14.1 et seq. shall be admissible. Parties may object to the admissibility of the written testimony at the evidentiary hearing. When the prefiled testimony of a witness is admitted into evidence, the witness shall be made available and subject to cross-examination.

(d) (No change.)

SUBCHAPTERS [16. AND] 15. THROUGH 17. (RESERVED)

CHAPTER 12 (RESERVED)

[CHAPTER 2  
RULES FOR SUMMARY PROCEEDINGS]

(Delete Entire Text of Chapter 2)

CHAPTER 13  
DIVISION OF MOTOR VEHICLES  
EXCESSIVE POINTS AND SURCHARGE CASES

SUBCHAPTER 1. APPLICABILITY

1:13-1.1 Applicability; scope

(a) The rules in this chapter shall apply to hearings arising from Division of Motor Vehicles (DMV) cases involving:

1. Disciplinary actions, other than license revocations, for accumulating excessive points; and
2. Proposed license suspensions for failure to pay a surcharge under the New Jersey Merit Rating Plan.

SUBCHAPTER 2. PRETRANSMISSION SETTLEMENT EFFORTS

1:13-2.1 Agency conference; failure to reach settlement

(a) In a case dealing with excessive points or a surcharge, DMV shall attempt to settle the dispute through a conference with the licensee. In surcharge cases, agency conferences are conducted pursuant to N.J.A.C. 13:19-12.3 through 12.9.

(b) If settlement is not reached, the parties shall use the conference to prepare the issues and evidence for the hearing, including:

1. Ascertaining whether the licensee disputes any facts recorded on the licensee's record abstract issued by DMV, and, if so, which facts and on what basis;
2. Ascertaining whether the licensee disputes the severity of the action proposed by DMV, and, if so, on what basis;
3. Ascertaining any discovery needs of the licensee; and
4. Ascertaining in excessive points cases whether the licensee is entitled to a time credit and, if so, the length thereof.

(c) At or forthwith after the conference, DMV shall supply the licensee with any material requested pursuant to N.J.A.C. 1:13-4.1 (Discovery), or any other appropriate documents.

(d) If settlement is not reached, DMV shall transmit the case to the Office of Administrative Law, including the documents set forth in N.J.A.C. 1:13-5.1(b) and (c).

SUBCHAPTER 3. CERTIFICATION

1:13-3.1 Certification

(a) The licensee may return a completed certification to the Clerk pursuant to N.J.A.C. 1:1-13.8.

(b) In excessive points cases, the licensee shall indicate in the certification whether he or she disputes the facts recorded on the licensee's driving abstract issued by DMV or disputes the severity of the sanction proposed by DMV, or both, or wants to raise any other relevant issues.

(c) In surcharge cases, the licensee shall explain in the certification why the surcharge is not required or inaccurately calculated.

SUBCHAPTER 4. DISCOVERY

1:13-4.1 Discovery

(a) Discovery shall be limited to the records of DMV with respect to the case. The records shall include a certified copy of the licensee's driving record abstract, relevant notices and orders of suspension, and certified proof of relevant mailings to the licensee. In surcharge cases, when the licensee is contesting the validity of any conviction or administrative suspension entered on the surcharge bill, the records shall also include any documentary evidence in the possession of DMV which supports the contested entry.

(b) DMV shall supply the licensee with a copy of the records set forth in N.J.A.C. 1:13-4.1(a).

(c) The licensee may make any discovery request either as part of the licensee's request to DMV for a hearing or at any pretransmission conference conducted by DMV.

SUBCHAPTER 5. IN-PERSON AND TELEPHONE HEARINGS

1:13-5.1 In-person hearings; telephone hearings

(a) If an in-person or telephone hearing is held, as provided by N.J.A.C. 1:1-13.8, such proceeding will be a summary hearing without any personal appearance by a DMV representative.

(b) In excessive points cases, DMV's case will be based on the licensee's driving record, the prehearing conference report, relevant notices and orders of suspension, certified proof of relevant mailings to the licensee, and any other documentary evidence or legal briefs necessary.

(c) In surcharge cases, DMV's case will be based on the documents in (b) above, and shall also include the surcharge bill and, if the licensee is contesting the validity of any conviction or administrative suspension entered on the surcharge bill, documentary evidence in the possession of DMV which supports the contested entry.

CHAPTERS 14. THROUGH 19. (RESERVED)

CHAPTER 20  
[RULES OF SPECIAL APPLICABILITY FOR] HEARINGS  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS APPEAL  
BOARD

SUBCHAPTER 1. APPLICABILITY AND DEFINITIONS

(No change.)

SUBCHAPTER 2. DEFINITIONS

[1:20-1.2]1:20-2.1 Definitions

(No change.)

SUBCHAPTER [2.] 3. COMMENCEMENT OF PROCEEDING

[1:20-2.1]1:20-3.1 Commencement of proceeding before the Appeal Board

(No change.)

[1:20-2.2]1:20-3.2 Who may commence a proceeding before the Appeal Board

(No change.)

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER [4.] 5. [TIME FOR FILING OF PETITION AND ANSWER] PLEADINGS

[1:20-4.1]1:20-5.1 Time for filing of petition; exhaustion of demand and return system

(No change.)

[1:20-4.2]1:20-5.2 Time for filing answer

(No change.)

[SUBCHAPTER 6. PETITION AND ANSWER]

[1:20-6.1]1:20-5.3 Contents of petition

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

(d) The petition shall constitute the first pleading for the purposes of N.J.A.C. [1:1-6.2] 1:1-5.2.

[1:20-6.2]1:20-5.4 Contents of answer

(No change.)

SUBCHAPTER [7.] 6. SERVICE, FILING AND POSTING OF PETITION

[1:20-7.1]1:20-6.1 Filing of petition and copies

(No change.)

[1:20-7.2]1:20-6.2 Service of petition upon majority representative

(No change.)

[1:20-7.3]1:20-6.3 Petition to public employer

(No change.)

[1:20-7.4]1:20-6.4 Filing of answer and copies

(a) (No change.)

(b) The respondent shall file two copies of the documents required by N.J.A.C. [1:20-6.2(c).] 1:20-5.4(c).

[1:20-7.5] **1:20-6.5** Service of answer upon petitioner

Upon filing the answer, the respondent shall serve a copy of the answer and of the documents required by N.J.A.C. [1:20-6.2(c)] **1:20-5.4(c)** upon the petitioner. The respondent shall file proof of service with the Appeal Board.

**SUBCHAPTER [5.] 7. TRANSMISSION OF CASES**

[1:20-5.1] **1:20-7.1** Transmission of cases to the Office of Administrative Law

In addition to the completed transmittal form, two copies of the petition and answer, and other papers required by N.J.A.C. [1:1-5,] **1:1-7.2**, the Appeal Board shall transmit to the Office of Administrative Law copies of the parties' proof of service of the petition and answer.

**SUBCHAPTER 8. NOTICES**

1:20-8.1 Notice of filing; employer posting

(a) In addition to the requirements of N.J.A.C. [1:1-5.2(d),] **1:1-8.3(a)**, a copy of the notice of filing shall be sent by the Office of Administrative Law to the public employer of the petitioner.

(b) (No change.)

**SUBCHAPTERS 9- [14] 12. (RESERVED)**

**SUBCHAPTER [3.] 13. CONDUCT OF HEARING**

[1:20-3.1] **1:20-13.1** Nature of hearing

The hearing shall be a **plenary** de novo proceeding.

[1:20-3.2] **1:20-13.2** Burden of proof

(No change.)

**SUBCHAPTER [15.] 14. EVIDENCE**

[1:20-15.1] **1:20-14.1** Evidence of demand and return proceedings

The record, or any portion of it, developed at the demand and return system proceeding may be introduced as evidence by either party, subject to the general rules of evidence contained in N.J.A.C. [1:1-15.] **1:1-14.**

**SUBCHAPTERS 15-16 (RESERVED)**

**SUBCHAPTER [16.] 17. CONCLUSION OF HEARING**

[1:20-16.1] **1:20-17.1** Oral argument on exceptions

(No change.)

[1:20-16.2] **1:20-17.2** Motion to reopen

(No change.)

**CHAPTER 21  
TRADE SECRET CLAIMS**

**SUBCHAPTER 1. APPLICABILITY**

(No change.)

**SUBCHAPTER 2. (RESERVED)**

**SUBCHAPTER 3. CONDUCT OF TRADE SECRET CASES**

1:21-3.1 Sound recordings; safeguarding the case file and sound recordings; preparation of transcripts

(No change.)

1:21-3.2 Sealing the record

(No change.)

1:21-3.3 Exceptions to the public hearing policy

When necessary to prevent the trade secret from being disclosed without authorization, the judge may make an exception to the public hearing requirements of N.J.A.C. [1:1-3.1] **1:13.1** and he or she may close the hearing, or any part thereof, and exclude witnesses, or, if necessary, parties from portions of the hearing.

**SUBCHAPTER 4. (RESERVED)**

**SUBCHAPTER 5. TRANSMISSION OF CASES TO THE OFFICE OF ADMINISTRATIVE LAW**

1:21-5.1 Transmission of cases; the trade secret documentation or information

Whether the case is transmitted to the Office of Administrative Law, under N.J.A.C. [1:1-5.2] **1:1-7.2**, by the Department of Environmental

Protection or the Department of Health, any information or documentation which reveals the trade secret shall not be transmitted with the case file.

1:21-5.2 Custody of the trade secret information or documentation; no copying  
(No change.)

**SUBCHAPTER 6. THROUGH SUBCHAPTER 8. (RESERVED)**

**SUBCHAPTER 9. MOTIONS**  
(No change.)

**SUBCHAPTER 10. (RESERVED)**

**SUBCHAPTER 11. DISCOVERY**  
(No change.)

**SUBCHAPTER 12. THROUGH 15. (RESERVED)**

**SUBCHAPTER 16. INITIAL DECISIONS AND RETURNING THE CASE TO THE TRANSMITTING AGENCY**  
(No change.)

**COMMUNITY AFFAIRS**  
**(a)**

**DIVISION OF HOUSING AND DEVELOPMENT**

**Uniform Construction Code**

**Barrier-Free Subcode**

**Exceptions to UCC**

**Proposed Amendment: N.J.A.C. 5:23-3.2**

**Proposed New Rules: N.J.A.C. 5:23-7**

Authorized By: Leonard S. Coleman, Jr., Commissioner,  
Department of Community Affairs.

Authority: N.J.S.A. 52:27D-123.

Proposal Number: PRN 1986-115.

A **public hearing** on the proposed subcode will be held at 10:00 A.M. on **May 19, 1986** at the New Jersey State Library for the Blind and Handicapped, 2300 Stuyvesant Ave., Trenton, New Jersey.

Submit comments by May 21, 1986 to:

Michael L. Ticktin, Esq.  
Administrative Practice Officer  
Division of Housing and Development  
CN 804  
Trenton, New Jersey 08625

**AGENCY NOTE:** There are 73 diagrams not published herein which are part of this proposal. Because these figures are not deemed to be essential to conveying the requirements of the subcode, they have not been included. The diagrams do, however, serve to illustrate the subcode requirements and may be helpful to understanding the proposed regulations. To obtain copies of these figures, please send a written request to the following address:

Department of Community Affairs  
Bureau of Construction Code Enforcement  
1333 Brunswick Circle  
CN 805  
Trenton, New Jersey 08625

**Copies** of these diagrams are also available at the following locations:

Bureau of Construction Code Enforcement  
Northern Regional Office  
200 Main Street  
Glen Gardner, NJ 08826  
Bureau of Construction Code Enforcement  
Southern Regional Office  
301 East Black Horse Pike  
Unit 7  
Williamstown, NJ 08094

The agency proposal follows:

### Summary

The proposed barrier-free subcode is intended to replace the Barrier-Free Design Regulations formerly issued by the Department of Treasury as part of Title 17 of the New Jersey Administrative Code (see N.J.A.C. 17:19A).

The proposed subcode is intended to apply to buildings in the assembly, business, educational, factory and industrial, mercantile, residential and storage use groups, with certain exceptions. These exceptions include residences with four or fewer dwellings units, units in multi-family structures which have individual entrances and which are offered for sale, mechanical and incidental storage spaces, certain mezzanines and balconies and certain alterations to historic buildings.

The subcode establishes standards for construction and alteration of buildings and structures in order to make them accessible to persons who are physically handicapped or aged. Included are standards for site design (for example, parking lots) necessary to make buildings or structures accessible.

### Economic Impact

The principal changes which will result from the adoption of the new barrier-free subcode are: the inclusion of the concept of adaptable dwelling units for the R-2/R-3 Use Groups which will require the construction of dwelling units which may be altered for use by residents with varying degrees of disability. Buildings or projects with five or more dwelling units will be covered by the barrier-free requirements unless each dwelling unit has a separate entrance and is offered for sale. Also, recreational facilities for which approval under the Uniform Construction Code is required will have to meet barrier-free requirements. These changes will result in added costs to the affected property owners which will, of course, vary greatly depending on the size and nature of the particular construction project.

### Social Impact

By expanding the range of buildings and facilities accessible to handicapped people, the proposed subcode will enhance their ability to participate more fully in society. The proposed subcode will provide handicapped people the ability to enjoy housing, employment and recreational opportunities that would not otherwise have been available to them.

Full text of the proposed amendment follows (deletions shown in brackets [thus]).

#### 5:23-3.2 Matter covered; exceptions

(a) (No change.)

(b) Rules concerning exceptions are:

[1. Public school facilities shall be in accordance with "Schoolhouse Guide" adopted pursuant to Title 18A of the New Jersey Statutes.

i. The Department of Education shall annually update its rules and regulations concerning public school facilities for the purpose of, insofar as appropriate for such facilities, making them conform with State Uniform Construction Code. Such updating shall be undertaken in consultation with the commissioner. Within three years from the effective date of this act, the Department of Education and commissioner shall submit to the Legislature reports on the extent to which the Department of Education's rules and regulations have been brought into conformity with the code, and identifying problems still outstanding for purposes of applying the provision of the code to all public school facilities.]

Renumber 2.-3. and 1.-2. (No change in text.)

[4. Facilities for the physically handicapped shall be provided in accordance with "Barrier-Free Design Regulations" adopted pursuant to Title 17 of the New Jersey Administrative Code.]

Full text of the proposed new rule follows.

### SUBCHAPTER 7. BARRIER-FREE SUBCODE

#### 5:23-7.1 Intent and purpose

This subchapter shall be interpreted to mandate access for the physically handicapped and aged whether they be in the status of occupant, employee, consumer, student, spectator, participant, or visitor.

#### 5:23-7.2 Scope and Applicability

(a) The provisions of this subchapter shall apply to all buildings, building sites, and portions thereof unless exempted by N.J.A.C. 5:23-7.3 in Use Groups A, B, E, F, I, M, R, and S.

(b) Curb ramps shall comply with separate standards promulgated by the New Jersey Department of Transportation relating to Curb Ramps for the physically handicapped. (see N.J.A.C. 16:41-2.5).

#### 5:23-7.3 Exemptions

(a) The following are exempt from the provisions of this subchapter:

1. Buildings or projects of Use Group R-2 or R-3 with four or fewer dwelling units, having common or separate entrances, whether offered for rental or for sale shall be exempt.

2. Buildings or projects of Use Group R-2 or R-3 which have dwelling units offered for sale each of which has a separate entrance shall be exempt.

3. Buildings or portions thereof of Use Group S, other than parking garages, shall be exempt.

4. Buildings or portions thereof of Use Group H shall be exempt.

5. Use Group B buildings with a total enclosed building area of all floors combined of 10,000 square feet or less shall be exempt.

6. Mezzanines and Balconies in Use Groups A-1 and A-5 shall be exempt, provided that the integrated seating and requirements of this subchapter are met and provided that all services available on the exempted mezzanines and balconies are provided identically on accessible levels.

7. Historic buildings shall be exempt with regard to those provisions of this subchapter which would change the historic character of the building.

8. Mechanical and incidental storage spaces, warehouse and storage buildings shall be exempt.

#### 5:23-7.4 Variations and Exceptions

(a) Where it can be demonstrated that one or more of the provisions of this subchapter present practical difficulties, variations or exceptions may be granted if:

1. The spirit and intent of the law are observed;

2. Public welfare and safety are assured;

3. It is clearly evident that equivalent facilitation and protection for the handicapped are secured;

4. Buildings, facilities, or portions thereof primarily serve children. In this case, variations and exceptions should be granted for adjustments of dimensions to make them suitable for children.

#### 5:23-7.5 Procedure for granting variations and exceptions

(a) Procedures for granting variations and exceptions shall be in accordance with the State Uniform Construction Code.

(b) A good faith attempt shall be made by the construction official to invite qualified disabled citizens or their advocates to testify during Construction Board of Appeals hearings. Where the attendance of disabled persons is anticipated the hearings shall be held in accessible facilities.

(c) The New Jersey Department of Community Affairs (DCA) shall maintain a list, available to construction officials, of qualified handicapped persons and their advocates who may be called upon to provide testimony as specified in (a) above.

(d) DCA shall sponsor and provide training to qualified handicapped persons and their advocates for inclusion on the list specified in (c) above.

#### 5:23-7.6 Definitions

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

"Accessible" means an environment that will permit a handicapped person to operate independently with comparative ease under normal circumstances and with little or no other assistance. This term is synonymous with the term "barrier-free."

"Accessible route" means a continuous unobstructed path connecting all accessible elements and spaces in a building or facility that can be negotiated by a handicapped person. Interior accessible routes may include corridors, floors, ramps, elevators, lifts and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps, and lifts.

"Adaptability" means the ability of certain building elements, such as kitchen counters, sinks, and grab bars, to be raised, lowered, added or otherwise altered so as to accommodate the needs of either the disabled or non-disabled, or to accommodate the needs of persons with different types or degrees of disability.

"Alteration" means as applied to a building or structure, a change or rearrangement in the structural parts or in the means of access or enlargement whether by extending on a side or by increasing in height or by the moving from one location or position to another.

"Mechanical space" means space housing equipment incident to the utility services of the building, for example: plumbing, HVAC, electrical distribution, and elevator equipment.

"Minimally accessible" means an environment that will afford a handicapped person access with difficulty. Some assistance may be required.

"Physically handicapped" means a person with a physical impairment which confines a person to a wheelchair, causes a person to walk with difficulty or insecurity, affects the sight or hearing to the extent that a person functioning in public areas is insecure or exposed to danger, causes faulty coordination, or reduces mobility, flexibility, coordination and perceptiveness to the extent that facilities are needed to provide for the safety of that person.

"Project" means a group of buildings which are under common ownership and which stand on a single parcel of land or parcels of land which are contiguous and are named, designated or advertised as a common entity. The contiguity of such parcels shall not be adversely affected by public rights-of-way incidental to such buildings.

5:23-7.7 Additions

(a) Additions meeting criteria as specified in N.J.A.C. 5:23-2.5 are considered new construction and shall meet all requirements of this subchapter. Additions shall also meet the following requirements:

1. The addition shall comply with N.J.A.C. 5:23-7.37 (Entrances) unless it can be shown that all criteria of N.J.A.C. 5:23-7.37(a)3 have been met in the existing building or facility.

2. If the only accessible entrance to the addition is located in the existing building or facility, then at least one accessible route shall comply with N.J.A.C. 5:23-7.16 (Accessible routes, walks and floors), and shall provide access through the existing building or facility to all rooms, elements, and spaces in the new addition.

3. If there are no toilet rooms in the addition and such facilities are provided in the existing building, then at least one toilet room per sex or at least one unisex toilet in the existing building shall be made to comply with N.J.A.C. 5:23-7.51 (Toilet and bathing facilities). In addition, there shall be an accessible route of travel between such toilet rooms and all rooms, elements, and spaces in the new addition.

5:23-7.8 Alterations

(a) No alterations shall be made which reduce or diminish the degree to which any building or facility meets the criteria of this subchapter.

(b) When existing entrance, stairs, elevators, or toilet rooms are altered, such changes are to be constructed in accordance with this subchapter without regard to percentage relationship between cost of alterations and the physical value of the building or facility. However, this requirement shall not apply where it would necessitate alterations of existing load-bearing structural members.

5:23-7.9 Use Group R-1

(a) Buildings of Use Group R-1 shall be made accessible to handicapped persons as follows:

1. All public facilities shall be made accessible including, but not limited to, entrances, parking lots, lobbies, vending machine areas, laundry areas, game rooms, conference facilities, exercise rooms, locker rooms, restrooms and swimming pools.

2. Four percent (rounded off to the next whole number) of units and the route of travel to each unit shall be made accessible. Units for the handicapped shall be proportionately distributed throughout all types and classes of units. The remaining units shall comply with the minimal accessibility requirements of this subchapter.

5:23-7.10 Use Group R-2 and R-3

(a) Buildings of Use Group R-2 or R-3, which are not exempted by N.J.A.C. 5:23-7.3, shall be made accessible to handicapped persons as follows:

1. All public facilities shall be made accessible including, but not limited to, entrances, parking lots, lobbies, vending machine areas, laundry areas, game rooms, exercise rooms, swimming pools, conference facilities, community rooms, mailbox areas, locker rooms, restrooms and storage facilities.

2. The route of travel to each unit in an elevator serviced building shall be accessible. The route of travel to each first or grade level unit in a non-elevator serviced building shall be accessible except as specified in N.J.A.C. 5:23-7.3(a).

3. All units in elevator serviced buildings and all entry and/or grade level units in non-elevator serviced buildings shall be made adaptable in accordance with N.J.A.C. 5:23-7.94.

4. All units on other than entry or grade level of non-elevator serviced buildings shall be made minimally accessible.

5. Each dwelling unit which has two or more levels of living space with an elevation difference of more than 24 inches and which does not have an internal elevator, is exempt from the requirements of N.J.A.C. 5:23-7.10(a)3. However, in each project containing such multi-level units, at least four percent of the total number of units, (rounded to the next whole number) shall be accessible or 100 percent of the units shall be adaptable.

6. Where an entrance and/or platform serves two or more units, it shall be made accessible. Where an entrance and/or entrance platform serves one unit only and is at, or not more than 24 inches above, grade level, it shall be constructed as accessible or adaptable. If it is made adaptable, it shall meet the following criteria:

i. The door(s) shall meet N.J.A.C. 5:23-7.40 through 5:23-7.49;

ii. If a level platform entrance is provided, it shall have minimum dimensions of 5 feet x 5 feet;

iii. Construction documents for the unit shall also include a design for the future modification of the entrance to provide accessibility. Any level platform(s) or ramp(s) included in the design shall meet provisions of N.J.A.C. 5:23-7.23.

5:23-7.11 Parking lots and parking garages

(a) Every parking lot or parking garage servicing an accessible entrance as described in this subchapter shall have at least the number of accessible parking spaces for the handicapped as set forth in Table 7.11.

(b) Where parking is provided, at least the number of accessible parking spaces for the handicapped as shown in Table 7.11 shall be provided. Where there are multiple lots, the accessible parking spaces shall be proportionately divided among those lots which are within 200 feet of an accessible entrance.

(c) In Use Group R, where parking spaces are reserved for occupants of specific units, the spaces associated with accessible units shall meet the criteria of N.J.A.C. 5:23-7.12 and 5:23-7.13. Additionally, Table 7.11 shall be applied to spaces available for visitors to determine the number of additional accessible spaces required.

TABLE 7.11  
ACCESSIBLE PARKING SPACES

Total Parking in Lot	Required Number of Accessible Spaces
up to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	Two percent of total
Over 1000	20 plus 1 for each 100 over 1000

5:23-7.12 Parking spaces

(a) Parking spaces for the handicapped shall be located as close as possible to elevators, ramps, walkways, and the accessible entrance they serve. They shall be no more than 200 feet from an accessible entrance. They shall be as level as possible with surface slopes not exceeding 1:48 (1/4 inch per foot) in any direction.

(b) Each parking space shall be identified with a sign displaying the International Symbol of Accessibility and appropriate wordage to include "DISABLED PERSONS WITH VALID ID ONLY."

1. Each sign shall be a minimum of 12 inches by 18 inches and shall be mounted with its bottom edge approximately 60 inches above the parking lot surface.

(c) There shall be four acceptable configurations for accessible parking spaces as illustrated in Figures 7.12a. through 7.12d.

1. Parking spaces each not less than 12 feet wide.

2. Parking spaces each not less than 8 feet wide with an adjacent access aisle at least 5 feet wide.

3. Curb side parking, provided that the curb has been indented at least 4 feet so that a handicapped person does not exit from a vehicle into a traffic lane.

4. Conventional curb side parking is permitted in modification and/or renovation work only.

(d) In all configurations, to the degree feasible, accessible parking spaces shall be located so that handicapped persons are not compelled to wheel or walk behind parked cars. Additionally, in all configurations, ramps or curb ramps shall be provided to permit handicapped persons access from the parking lot level to the servicing walkway. A curb ramp shall never be located where it would be blocked by a parked vehicle. In all configurations, provisions such as curbs or bumpers should be included to prevent parked vehicles from blocking accessible walkways.

5:23-7.13 Parking spaces for vans

(a) At least ten percent of accessible parking spaces, or at least one, whichever is greater, shall have a minimum vertical clearance of 8 feet 6 inches. See Figure 7.13.

5:23-7.14 Passenger loading zones

(a) If passenger loading zones are provided, they shall:

1. Have access aisles at least 4 feet wide by 20 feet long adjacent, parallel, and level with the vehicle standing spaces;
2. Have curb ramps if there are curbs between the access aisle and servicing walkway;
3. Have vehicle standing spaces and access aisle with surface slopes not exceeding 1:48 (1/4 inch per foot) in any direction;
4. Have minimum vertical clearance of 8 feet 6 inches.

5:23-7.15 Service canopies

(a) Service canopies, for the purpose of this section, are defined as covers over vehicular driveways to protect the occupants of vehicles while being discharged or while conducting business at drive-in windows of banks, fast food establishments, etc.

(b) To allow for the passage of vans for the handicapped with high tops, there shall be a minimum clearance of 8 feet 6 inches between the highest point of the roadway crown and the lowest point of the canopy or any hanging appendage.

5:23-7.16 Accessible routes, walks, and floors

(a) At least one accessible route shall comply with N.J.A.C. 5:23-7.17 through 5:23-7.22 and shall connect each accessible building entrance to the following:

1. Accessible building entrances are not required to be connected to one another on the exterior of the building.
2. Transportation facilities located within the property line of a building site, including passenger loading zones, public transportation facilities, and parking spaces for the handicapped.
3. Public streets and sidewalks.
4. Other buildings and facilities on the same site other than those exempted by N.J.A.C. 5:23-7.3.
5. All accessible spaces and rooms within each building or facility except as exempted by 5:23-7.4
6. Courts and plazas.

5:23-7.17 Accessible routes: change in level

(a) All changes in level or grade on accessible routes, walks, or floors, shall comply with the following:

1. Changes in level of up to 1/4 inch vertical dimension may be made without edge treatment. See Figure 7.17a.
2. Changes in level of 1/4 inch to 3/4 inch must be beveled with slope not exceeding 1:2 (30 degrees). See Figure 7.17b
3. Changes in level of greater than 3/4 inch are to be connected by ramp, curb ramp, elevator, or platform lift meeting criteria of this subchapter. However, the maximum change in level which may be bridged by a ramp shall be 60 inches. Platform lifts may be used to bridge any level differential in modification and/or renovation work. In new construction, platform lifts shall be utilized only for access to special purpose areas and shall not be used on accessible routes between major floor areas or accessible entrances.

4. Stairs shall not be the sole means of vertical access along an accessible route.

(b) The following are exceptions to the requirements of (a) above:

- i. Floor areas not normally opened or used by the general public may be raised or depressed if necessary for the performance of specific functions such as security or display.
- ii. In Use Groups A-2 and A-3, raised or depressed areas not exceeding 32 inches in height shall be allowed provided they encompass less than ten percent of the usable net area and provided that identical facilities and services are available on accessible levels.
- iii. Single step platform seating may be utilized in Use Groups A-1 and A-5 when necessary to allow the serving of food to persons also requiring a sight line to view a theatrical performance or sports event. Such single step platform seating shall meet the following technical criteria:

- (1) 20 percent of total seating area shall be fully accessible;
- (2) Each platform shall be a minimum of 6 feet 6 inches in depth and a maximum of 7-1/4 inches in height;
- (3) Areas normally used by the general public, dance floors for example, shall be made accessible.

5:23-7.18 Accessible routes: width

(a) Accessible routes, walks, and floors, shall provide clearances for moving wheelchairs as follows:

1. Minimum clear width for passage of 3 feet. Such width may, however, be reduced to 2 feet 8 inches for a distance not to exceed 2 feet at points such as doorways. See Figure 7.18a.

2. Minimum maneuvering clearances as shown in Figures 7.18b and 7.18c if the accessible route requires a turn around an obstruction.

3. In situations where considerable traffic of wheelchairs is expected, a minimum clear width for passage of 5 feet is recommended. See Figure 7.18d.

5:23-7.19 Accessible routes: protruding objects

(a) No protruding objects shall reduce the clear width of an accessible route or maneuvering space below the minimums required by N.J.A.C. 5:23-7.18. See Figure 7.19a.

1. Objects less than 2 feet long that are fixed to wall surfaces shall not project into accessible routes more than 4 inches if mounted with their leading edges between 2 feet 3 inches and 6 feet above the finished floor. See Figure 7.19b.

2. Objects fixed to wall surfaces may project more than 4 inches if mounted with the lower extreme of their leading edge less than 2 feet 3 inches above the finished floor. These objects shall not project, however, into the minimum required clear width specified in N.J.A.C. 5:23-7.18. See Figure 7.19c.

3. Free standing objects mounted on posts or pilons may overhang 1 foot maximum from 2 feet 3 inches to 6 feet 8 inches above the ground or the finished floor. These objects shall not project, however, into the minimum required clear width specified in N.J.A.C. 5:23-7.18. See Figure 7.19d.

5:23-7.20 Accessible routes: vertical clearance

There shall be a minimum vertical clearance (head room) of 6 feet 8 inches throughout accessible routes. If the vertical clearance of an area adjoining an accessible route is reduced to less than 6 feet 8 inches, a barrier to warn blind or visually-impaired persons shall be provided. See Figure 7.20.

5:23-7.21 Accessible routes: slope

Floors, walks, and accessible routes with running slopes of 1:20 or steeper shall be considered ramps and shall comply with the appropriate portions of this subchapter. Cross-slopes on floors, walks, and accessible routes shall not exceed 1:48 (1/4 inch per foot).

5:23-7.22 Accessible routes: ground and floor surfaces

(a) Surface conditions of paving and floors shall be stable, firm, and slip-resistant. Irregular paving and flooring materials which may cause tripping or difficult wheelchair passage because of height differentials shall not be permitted on accessible routes.

(b) Accessible routes shall be designed so that their surfaces will not collect water. Gratings located on accessible routes shall have openings no greater than 1/2 inch when measured in the predominant direction of travel. Gratings with elongated openings shall be placed so that the long dimension is perpendicular to the predominant route of travel. See Figure 7.22a and 7.22b.

(c) If carpet or carpet tile is used on a ground or floor surface, then it shall be securely attached, have a firm cushion, pad, or backing or no cushion or pad, and have a level loop, textured loop, level cut pile, or level cut/uncut pile texture. The maximum pile height shall be 1/2 inch. Exposed edges of carpet shall be fastened to floor surfaces and have trim along the entire length of the exposed edge. Carpet edge trim shall comply with N.J.A.C. 5:23-7.17.

5:23-7.23 Ramps and curb ramps

All ramps and curb ramps on accessible routes shall comply with N.J.A.C. 5:23-7.24 through 5:23-7.31, except that those ramps and curb ramps within a public street are not covered by this subchapter. Instead they shall meet the requirements of the respective public city, county or state agency having jurisdiction.

5:23-7.24 Ramps: slope and rise

(a) The least practical slope for any ramp or curb ramp shall be provided subject to the following maximums:

1. The maximum slope shall not exceed 1:12 (8.33 percent).
  - i. Exception: For ramps with a maximum horizontal projection of 8 feet the slope shall not exceed 1:10.
  2. Slope is the ratio of a ramp's rise to its horizontal projection. See Figure 7.24.

5:23-7.25 Ramps: width

Ramps and curb ramps shall have a minimum clear width of 3 feet exclusive of edge protection or flared sides.

**5:23-7.26 Ramps: cross-slope**

Cross-slope of ramp surfaces and of curb ramp surfaces exclusive of flared sides shall not exceed 1:48 (1/4 inch per foot).

**5:23-7.27 Ramps: surface**

Surfaces of ramps and curb ramps shall be stable, firm, and slip-resistant. Irregular surface materials which may cause tripping or difficult wheelchair passage because of height differentials shall not be permitted.

**5:23-7.28 Ramps: drainage**

Ramps and curb ramps shall be designed so that their surfaces will not collect water. Gratings should be avoided on ramps and curb ramps if at all possible. If gratings are absolutely necessary, they shall comply with N.J.A.C. 5:23-7.22(b).

**5:23-7.29 Ramps: additional requirements**

(a) In addition to the requirements of N.J.A.C. 5:23-7.23 through 7.28, all ramps shall meet the following requirements:

1. Provide landings at the top, bottom, at all changes of direction, and after each 30 feet of projection. Landings shall:

- i. Have a width which shall be at least as wide as the widest ramp run approaching it;
- ii. Have a minimum length of 5 feet;
- iii. Have a minimum size of 5 feet by 5 feet at direction changes;
- iv. Have a minimum size which will fulfill the latchside and hingeside provisions of this section as specified in N.J.A.C. 5:23-7.43.

2. Provide handrails that comply with N.J.A.C. 5:23-7.31 on both sides of any ramp run exceeding a 9 inch rise.

3. Provide curbs, walls, vertical guards or projected edges at ramps and landings with drop-offs exceeding 6 inches. Minimum curb height shall be 2 inches. See Figures 7.29a through 7.29c.

4. The maximum change in level on an accessible route which may be bridged by a ramp is 60 inches. The provision of rest areas does not alter this section. If an accessible route contains a change in level greater than 60 inches, such change shall be bridged by a walkway, elevator, or platform lift.

**5:23-7.30 Curb ramps: special requirements**

(a) In addition to the requirements of N.J.A.C. 5:23-7.23 through 7.29 above, curb ramps shall comply with the following requirements:

1. Provide flared sides if curb ramps are located where pedestrians might walk across the ramp. The flared sides shall have a slope not exceeding 1:10 where a 4 foot landing or greater is provided at the top. If less than a 4 foot landing is provided, the flared slope shall not exceed 1:12. Where pedestrians will not normally walk across the ramp and where a landing of at least 4 feet is provided, returned curbs may be used. See Figures 7.30a through 7.30c.

2. If built-up curb ramps are used as an alternative to standard curb ramps, such ramps must be located so that they do not project into vehicular traffic lanes. See Figure 7.30d.

3. Diagonal or corner type curb ramps having returned curbs shall have the edges of these curbs parallel to the direction of pedestrian flow. See Figure 7.30e.

4. Diagonal or corner-type curb ramps having flared sides shall have at least a 2 foot long segment of straight curb located on each side of the curb ramp and within the marked crossings. See Figure 7.30f.

5. Each curb ramp shall have a clear and level space with a minimum depth of 4 feet at its top and bottom for discharge. If marked crossings are provided, the bottom discharge area shall be located entirely within the marked area. See Figure 7.30g.

6. Where safety islands are provided, such islands shall either be cut through flush with the street surface or ramped on each side to permit crossing. If the ramp alternative is used, the island shall be sufficiently wide to provide for appropriately sloped ramps and a 4 foot long rest area. See Figure 7.30h.

7. Curb ramps having less than a 9 inch rise do not require handrails.

8. Transitions from ramps to walks, gutters, or streets shall be flush and free of abrupt changes.

**5:23-7.31 Ramps: handrails**

(a) Required handrails shall comply with this section:

1. The handgrip portion of the handrail, if round, shall be not less than 1-1/4 inches nor more than 2 inches in diameter. If the shape of the handrail is not round, then the larger dimension shall not be more than 2 inches. See Figure 7.31a.

2. If handrails are mounted adjacent to walls or other surfaces, a 1-1/2 inch clear space must be provided between the surface and the handrail. The handrail and the surfaces adjacent to the handrail shall be free of any sharp or abrasive elements. Any edges shall have a minimum radius

of 1/8 inch. Free standing rails located further than 6 inches from a wall or other vertical surface are not subject to this provision. See Figures 7.31b through 7.31d.

3. Handrails may be located in recesses if the recesses comply with the Figure 7.31e below.

4. Handrails shall be continuous, including rest areas, landings and level areas required at turns.

5. Gripping surfaces shall not be interrupted by newel posts, balusters, or other obstructions.

6. Handrail projections shall be provided as follows:

i. At the top and bottom of each ramp, handrails shall project parallel with the landing surface for a length of 1 foot beyond the top and the bottom of the ramp surfaces. See Figure 7.31f.

ii. Full extension of handrails shall not be required in alterations where such extensions would be hazardous or impossible due to plan configurations. In such situations, extension of the handrails around a corner is permissible.

7. Handrails shall be mounted at a height of 2 feet 8 inches to 2 feet 10 inches above ramp surfaces.

8. Handrails shall be designed to resist a simultaneous vertical and horizontal thrust of 50 pounds per lineal foot applied at the top of the railing. Handrails of materials other than metal are permitted if they meet these structural requirements.

9. Handrails shall not rotate in their fittings.

10. Ends of free-standing handrails shall be rounded and returned smoothly to the post. See Figure 7.31f.

**5:23-7.32 Stairs**

All stairs, connecting levels that are not connected by an elevator or other means of accessibility and other than those leading to elevator pits, mechanical rooms, equipment catwalks, and similar spaces shall comply with N.J.A.C. 5:23-7.33 through 5:23-7.36.

**5:23-7.33 Stairs: risers**

Risers that do not exceed 7 inches in height shall be provided. Open risers are not permitted.

**5:23-7.34 Stairs: nosings**

(a) Nosings shall project a maximum of 1-1/2 inches.

(b) Nosings shall have a leading edge with a maximum radius of curvature of 3/4 inch.

(c) Nosings shall be formed by risers that are sloped, or shall have undersides of the nosings which form an angle not less than 60 degrees from the horizontal. See Figure 7.34a.

**5:23-7.35 Stairs: handrails**

Continuous handrails must be provided at both sides of stairways.

**5:23-7.36 Stairs: gratings**

Gratings shall not be permitted on stair treads. Gratings should be avoided on stair landing surfaces but, if absolutely necessary, they shall comply with N.J.A.C. 5:23-7.22.

**5:23-7.37 Accessible entrances**

(a) The following entrances to a building or facility shall be constructed in a manner that makes them accessible either through fixing the exterior grade level with the entrance or providing walkways, ramps, elevators, or platform lifts which comply with this subchapter:

1. One principal entrance frequently used by the general public;
2. Each entrance servicing a parking lot containing parking spaces for the handicapped, public transportation facility, or passenger loading zone;

3. For additions to existing buildings, the above requirements shall apply except if it can be shown that they have all been appropriately met in the structure to which an addition is being made and there is an accessible route of travel from such entrances to the addition. Such entrances and accessible route must be available during all hours of operation of functions within the addition;

4. Additional accessible entrances shall be provided if necessary to assure access to all activities within a building if free circulation is not possible due to considerations of security, limited internal circulation routes, hours of operation, etc.

(b) When considering the number of accessible entrances required, one entrance may be considered as serving more than one of the above functions.

**5:23-7.38 Accessible entrances: marking**

All accessible entrances shall be identified by the international symbol of accessibility.

5:23-7.39 Accessible entrances: obstructions

(a) No obstructions to the passage of a wheelchair shall be placed at an accessible entrance. Turnstiles, vertical posts spaced less than 32 inches apart, and any chain or other mechanical device requiring opening or removal by other than the handicapped person attempting to accomplish passage are prohibited at accessible entrances.

1. Exception: Barriers, such as gates, operated mechanically or by an employee, shall be allowed where such barriers control access for the receipt of money, tickets, security clearance, etc., and where such mechanical or other employee operation is required for all members of the population.

i. Accessible entrances blocked by such barriers must meet width and other applicable requirements for accessible entrances to allow free passage when the barrier is removed.

5:23-7.40 Doors and doorways

(a) The following doors are required to be accessible and shall comply with N.J.A.C. 5:23-7.41 through 5:23-7.49.

1. At least one door or a single door of a multiple entry at each accessible entrance to the building or facility.

2. At least one door at each accessible entrance to each space within the building or facility unless exempted by N.J.A.C. 5:23-7.3.

3. Each door that is an element of an accessible route.

4. Gates, including ticket gates, on an accessible route are considered as doors and shall comply with this section.

5:23-7.41 Doors and doorways: technical criteria

(a) In double-leaf doorways, at least one leaf shall comply with this section and it shall be the active leaf. Double-leaf automatic doors are exempted from the one leaf provision if both leaves are automatic.

(b) Revolving doors or turnstiles are not accessible doors and shall not be the sole means of access at any accessible entrance or on any accessible route. In such cases, an accessible door shall be provided immediately adjacent to the turnstile or revolving door. If such door is providing an accessible route of travel around a revolving door or turnstile, it shall be operable at all times that the revolving door or turnstile is operable.

5:23-7.42 Doors and doorways: clear width

(a) Accessible doorways shall provide a clear opening of 2 feet 8 inches as measured with the door open 90 degrees between the face of the door and the latch side stop. See Figures 7.42a, b, and c.

(b) Doors into closets, other than walk-in closets, may be a minimum of 1 foot 8 inches wide.

5:23-7.43 Doors and doorways: maneuvering space

(a) The following space at non-automatic and non-power assisted doors shall be provided:

1. At doors allowing front approach only, maneuvering space shall be as shown in Figure 7.43a. The minimum latchside clearance required on pull side is 18 inches, but 24 inches is recommended. In addition, if the door is equipped with both a latch and a closer, then a minimum 1 foot latch side clearance is required on the push side. See Figure 7.43a.

2. At doors allowing hingeside approach only, maneuvering space shall be as shown in Figure 7.43b.

4. Floor and surface areas within the required maneuvering space shall be clear and comply with N.J.A.C. 5:23-7.22 (Ground and floor surfaces). They shall not have a slope in any direction greater than 1:48 (1/4 inch per foot.)

5:23-7.44 Doors in Series

Between any two hinged or pivoted doors in a series, a minimum of 4 feet plus the width of any door swinging into the space must be provided. Opposing doors shall not swing toward each other into the intervening space. See Figures 7.44a and b.

5:23-7.45 Doors and doorways: thresholds

Raised thresholds, if provided, shall be beveled with a slope not to exceed 1:2 if the height is greater than 1/4 inch. The maximum height for raised thresholds shall be 3/4 inch.

5:23-7.46 Doors and doorways: hardware

Handles, pulls, latch sets, and other operating hardware that are easy to grasp with one hand and do not require twisting of the wrist, tight grasping, or tight pinching to operate must be provided. Acceptable designs include, but are not limited to, lever-operated hardware, push-type hardware, and U-shaped handles. Operating hardware shall be exposed and usable from both sides. No operating hardware shall be mounted more than 4 feet above finished floor. In Use Groups R-1 and R-2, this requirement applies only to units designated as accessible and to common use spaces.

5:23-7.47 Doors to hazardous areas

Doors to loading platforms, mechanical equipment rooms, stages and similar spaces shall be provided with a textured surface on any door handle, knob, pull, or other piece of operating hardware on doors that lead to such areas. Textured surfaces may be achieved by knurling, roughening, or applying materials on the hand contact surface.

5:23-7.48 Doors and doorways: closers and opening forces

(a) Door closers, if provided, shall have sweep periods adjusted so that it will take a door a minimum of five seconds to move from a position of 70 degrees opened to a position where the leading edge of the door is 3 inches from the jamb.

(b) Maximum pushing or pulling opening forces for doors shall be eight pounds.

5:23-7.49 Automatic doors

(a) If automatic pedestrian doors are provided they shall:

1. Not open to back check in less than five seconds;

2. Not require more than 15 pounds to stop door movement;

3. Comply with the latest version of ANSI A156.10, American National Standard for Power-Operated Pedestrian Doors.

5:23-7.50 Toilet and bathing facilities

(a) Toilet and bathing facilities shall be made accessible to handicapped persons as follows:

1. In Use Groups R-1 and R-2/R-3:

i. Those toilet and bathing facilities in units which are required to be accessible and public facilities shall meet the requirements of N.J.A.C. 5:23-7.51.

ii. Those toilet and bathing facilities in units which are required to be minimally accessible shall meet the requirements of N.J.A.C. 5:23-7.63.

iii. Those toilet and bathing facilities in units which are required to be adaptable shall meet the requirements of N.J.A.C. 5:23-7.96.

2. In all other Use Groups:

i. Each toilet or bathing facility containing any fixture required to meet the minimum fixture count of the plumbing subcode shall be made accessible and shall comply with paragraph N.J.A.C. 5:23-7.51. Each toilet or bathing facility not containing any such required fixture shall be made minimally accessible and shall comply with N.J.A.C. 5:23-7.63.

5:23-7.51 Technical criteria for accessible toilet and bathing facilities

Each toilet or bathing facility required to be accessible shall meet the technical criteria of N.J.A.C. 5:23-7.52 through 5:23-7.67.

5:23-7.52 Accessible toilet and bathing facilities: marking

Doors to toilet rooms and bathing facilities and to accessible water closet stalls, except in individual units of Use Groups R and I, shall be identified by the international symbol of accessibility. See N.J.A.C. 5:23-7.86 (Signs).

5:23-7.53 Accessible toilet and bathing facilities: doors

(a) Doors to toilet rooms and bathing facilities shall:

1. Comply with N.J.A.C. 5:23-7.40 (Doors and doorways);

2. Not swing into clear floor spaces required at fixtures;

3. Not swing into clear floor spaces required by N.J.A.C. 5:23-7.54.

5:23-7.54 Accessible toilet and bathing facilities: clear turning space

(a) Each toilet room and bathing facility shall have an unobstructed turning space that:

1. Contains the minimum clear space required to make the 180 degree turn, as shown in Figure 7.54a.

2. Adjoins an accessible route complying with N.J.A.C. 5:23-7.16, (accessible routes, walks, and floors).

3. May overlap the accessible route and clear floor space at fixtures, and the knee space as specified in Figure 7.58a and b.

5:23-7.55 Accessible toilet and bathing facilities: Water closets

(a) At least four percent (rounded off to the next higher whole number) but not less than one water closet in each toilet room shall:

1. Be provided with clear floor access space complying with Figures 7.55a and 7.55b for fixtures not mounted in stalls. Clear floor space may be provided to allow either left hand or right hand approach. Water closets shall be mounted with their centerlines 18 inches from the adjacent wall. For fixtures mounted in stalls, see Figures 7.56a and b.

2. Have top of flood rims mounted 14 inches to 15 inches (industry standard) above finished floor. Seats shall not be sprung to return to a lifted position when not in use.

3. Have automatic or hand operated flush controls. Controls shall be mounted on the wide side of the access area no higher than 44 inches above finished floor.

4. Have grab bars mounted as shown in Figures 7.55c and d.

5. Have toilet paper dispensers mounted as shown in Figure 7.55d. Height measured from the bottom of the dispenser to the finished floor shall be 1 foot 9 inches. Dispensers shall not project beyond the front edge of the water closet. Dispensers that control delivery or do not permit continuous paper flow shall not be used.

5:23-7.56 Accessible toilet and bathing facilities: toilet stalls

(a) In toilet rooms containing toilet stalls, at least four percent, rounded off to next higher whole number, but not less than one stall shall be made accessible.

1. Accessible toilet stalls shall have a water closet complying with N.J.A.C. 5:23-7.55.

2. Accessible toilet stalls shall be of the size and arrangement as shown in Figure 7.56a. Stall configuration may be reversed for left or right hand approach. In alteration work, where the provision of the standard stall (Figure 7.56a) is structurally impractical or plumbing fixture code requirements prevent combining existing stalls to provide necessary space, the alternate stall configuration of Figure 7.56b may be utilized.

3. Accessible toilet stalls shall have toe clearances at the front partition and at least one side partition of 9 inches above finished floor. If such space is not provided, length and width of stall shall be increased by 9 inches in each direction.

4. Accessible toilet stalls shall have doors that comply with N.J.A.C. 5:23-7.40 (Doors and doorways). However, if the toilet stall approach is from the latch side of the stall door, clearance between the door side of the stall and any obstruction may be reduced from the normal standard of 48 inches to a minimum of 42 inches.

5. Accessible toilet stalls shall have doors that are out-swinging. The following additional requirements apply:

i. Coat hook(s), if provided, shall be mounted at 48 inches above finished floor.

ii. Interior latch shall be slide bolt style or comply with N.J.A.C. 5:23-7.46.

iii. Loop-type door handle shall be provided on the interior of the door at maximum height of 42 inches from finished floor.

6. Accessible toilet stalls shall have grab bars mounted as shown in Figures 7.56c and d.

7. Accessible toilet stalls shall have toilet paper dispensers mounted as shown in Figure 7.56d. Height measured from the bottom of the dispenser to the finished floor shall be 1 foot 9 inches. Dispensers shall not project beyond the front edge of the water closet. Dispensers that control delivery or do not permit continuous flow shall not be used.

5:23-7.57 Accessible toilet and bathing facilities: urinals

(a) Four percent (rounded off to next higher whole number) of urinals in any toilet room, but not less than one, shall be made accessible. Accessible urinals shall:

1. Have a clear floor space that complies with Figure 7.57a. Urinal shields shall not extend beyond the front edge of the urinal rim.

2. Be wall-hung with an elongated rim mounted at 17 inches maximum above the finished floor. See Figure 7.57b.

3. Have automatic or hand operated controls. Controls shall be mounted no higher than 44 inches above the finished floor.

5:23-7.58 Accessible toilet and bathing facilities: lavatories

(a) Four percent (rounded off to next higher whole number) in each toilet room or bathing facility, but not less than one, shall be accessible. Accessible lavatories shall meet the following requirements:

1. Lavatories with the rim or counter surface shall be mounted no higher than 2 feet 11 inches above finished floor. Knee space between bottom of apron and finished floor shall be at least 2 feet 6 inches high, 2 feet 6 inches wide, and 1 foot 7 inches deep. Toe space of at least 9 inches high shall be provided. See Figure 7.58a.

2. Clear space permitting frontal approach as specified in figure 7.58b shall be provided. Clear floor space and knee space may overlap a maximum of 1 foot 7 inches.

3. Hot water and drain lines shall be insulated or covered unless delivered water temperature is controlled to be less than 105 degrees Fahrenheit. No sharp or abrasive surfaces shall remain exposed under accessible lavatories.

4. Faucet controls shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate faucet controls shall be no greater than five pounds of force.

5. If self-closing faucet valves are used, they must be adjusted to remain open for a minimum of 10 seconds.

5:23-7.59 Accessible toilet and bathing facilities: mirrors

Mirrors at each accessible lavatory position and any other mirrors provided for general use shall be mounted with the bottom of the reflecting surface no higher than 3 feet 4 inches above finished floor.

5:23-7.60 Accessible toilet and bathing facilities: controls, dispensers, receptacles or other equipment

All controls, dispensers, receptacles and operating equipment shall be mounted within the reach of handicapped persons and shall comply with N.J.A.C. 5:23-7.85 (Controls and Operating Mechanisms).

5:23-7.61 Accessible toilet and bathing facilities: bathtubs and showers

(a) At least one fixture of each type provided shall be made accessible in each toilet or bathing facility (where required). Accessible bathtubs or showers shall:

1. Have clear access space as shown in Figures 7.61 a, b, c, d and e.

2. Have seats provided as shown in Figures 7.61 a, b, c and d. Seats and their attachments shall safely support a 250 pound continuous live load without sustaining permanent deflections. Seats in showers shall be mounted 18 inches above finished floor. Seats shall not move when mounted during use. In-tub seats may be portable.

3. Have grab bars mounted as shown in Figures 7.61a through 7.61e. See specifications for grab bars in N.J.A.C. 5:23-7.62.

4. Have faucets and operating controls complying with N.J.A.C. 5:23-7.85 (Controls and operating mechanisms). Faucet and controls shall be mounted as shown in Figures 7.61 f, g and h.

5. Except in unmonitored facilities where vandalism is a concern, have a shower spray unit with a flexible hose a minimum of 60 inches long that is usable as a fixed showerhead and as a hand held shower.

6. Have enclosures, if provided, that do not obstruct transfer from wheel chairs onto seats or into tubs or access to controls from clear floor spaces. Bathtub enclosures shall not have tracks mounted on the bathtub rims.

7. Shower curbs and threshold shall comply with N.J.A.C. 5:23-7.17.

5:23-7.62 Accessible toilet and bathing facilities: grab bars

(a) Grab Bars for accessible toilet and bathing facilities shall:

1. Have a diameter or width of the gripping surface that is 1 1/4 inches to 1 1/2 inches.

2. Have a 1/2 inch (maximum/minimum) clear space between the bar and the mounting surface. See Figure 7.62.

3. As installed, support a minimum concentrated load of 250 pounds.

4. Not rotate in their fittings.

5:23-7.63 Technical criteria for minimally accessible toilet and bathing facilities

Each toilet or bathing facility required to be minimally accessible shall meet the technical criteria of N.J.A.C. 5:23-7.63 through 5:23-7.67.

5:23-7.64 Minimally accessible toilet and bathing facilities: doors

(a) Doors to minimally accessible toilet rooms and bathing facilities shall:

1. Provide a clear width of not less than 30 inches as measured with the door open 90 degrees between the face of the door and the latch side stop.

2. Not swing into clear spaces required by N.J.A.C. 5:23-7.65.

5:23-7.65 Minimally accessible toilet and bathing facilities: clear spaces

(a) Each toilet room and bathing facility shall have an unobstructed clear space that:

1. Is a minimum of 60 inches long and 32 inches wide, with the door opening onto the 32 inches side. See Figure 7.65.

Note: Position of water closet and lavatory are interchangeable.

2. Adjoins an accessible route complying with N.J.A.C. 5:23-7.16, (Accessible routes, walks and floors) or, in minimally accessible units in Use Group R, a corridor with a minimum width of 36 inches.

5:23-7.66 Minimally accessible toilet and bathing facilities: water closets

(a) Each water closet shall:

1. Be mounted with its centerline 18 inches from the adjacent wall;

2. Be mounted with its flood rim 14 inches to 15 inches (industry standard) above the finished floor.

5:23-7.67 Minimally accessible toilet and bathing facilities: grab bars

(a) Each toilet room and bathing facility required to be minimally accessible shall have grab bars meeting criteria of N.J.A.C. 5:23-7.62 mounted at the foot and back of tubs of the length and positioning shown in Figures 7.67a and b.

5:23-7.68 Elevators

(a) Every multi-storied building shall provide elevator(s) that are accessible to and usable by physically handicapped people with the following exceptions:

- 1. In Use Group B, buildings with less than 6,000 square feet of total gross area at other than the principal entrance level.
- 2. In Use Groups B and F, mezzanines of less than 10,000 square feet total gross area.
- 3. Use Group R:
  - i. One to four family residences;
  - ii. In use group R-2, buildings which are less than four stories and which have four or fewer dwelling units per floor;
  - iii. In use group R-2, buildings less than three stories;
  - iv. In use group R-1, two and three story buildings with fewer than 80 units where the first floor provides required barrier-free accommodations.
- (b) In Use Group A-5, elevator(s) between decks in grandstands, stadia, and arenas shall be provided.
- (c) Freight elevators shall not be considered as meeting the requirements of this section.

5:23-7.69 Technical criteria for elevators:

- (a) Elevators shall meet the technical criteria of N.J.A.C. 5:23-7.70 through 5:23-7.79. For additional information see the American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks, A17.1, and see also National Elevator Industry, Inc. (NEII) Suggested Minimum Elevator Requirements for the Handicapped.
- (b) Elevators shall provide stops at each story of the building, including parking levels, except that stops are not required for stories containing only mechanical equipment.
- (c) Elevators shall be of the automatic type and shall not be key operated except if a full time operator is in attendance during all hours that the building is open.

5:23-7.70 Elevators: operation and leveling

Elevators shall be automatic and shall be provided with a self-leveling feature that will automatically bring the car to the floor landing within a tolerance of 1/2 inch under normal loading and unloading conditions. The self-leveling feature shall, within its zone, be entirely automatic and independent of the operating device and shall correct for over-travel or under-travel and shall maintain the car approximately level irrespective of loading conditions.

5:23-7.71 Elevator door operation

- (a) Elevator doors shall be a minimum of 3 feet wide and automatic door controls shall comply with the following requirements:
  - 1. The minimum acceptable time from notification that a car is answering a hall call until the doors of the car start to close shall be as indicated in Table 7.71a.

Table 7.71a  
DOOR TIMING

Distance		Time
Feet	Meters	(In Seconds)
0 to 5	1.5	5
10	3	7
15	4.5	10
20	6	13

- i. The travel distance shall be established from a point in the center of the corridor or lobby (maximum of 5 feet) directly opposite the farthest hall button to the centerline of the farthest hoistway entrance. See Figure 7.71b.
- 2. Doors shall remain fully open for a minimum of five seconds.
- 3. Doors shall have a reopening device which will function to stop and reopen the car door and adjacent hoistway door in case the car door is obstructed when the door is closing. This reopening device shall also be capable of sensing an object or person in the path of a closing door without requiring contact for activation at a nominal height of 5 inches and 2 feet 5 inches above finished floor. Such devices shall remain effective for a period of not less than 20 seconds. For additional information, see ANSI A17.1 as referenced in Appendix A of the building subcode.

5:23-7.72 Elevator car

- (a) The minimum floor areas of elevator cars shall comply with Figures 7.72a and b.
  - 1. Exception: Where existing shaft or structural elements prohibit strict compliance in alteration work, these dimensions may be reduced by the minimum amount necessary, but in no case shall they be less than 4 feet by 4 feet clear minimum car size with a 2 feet and 8 inches minimum door opening.
  - (b) Car floors shall comply with N.J.A.C. 5:23-7.16 (Accessible routes, walks and floors). The clearance between the car platform and sill and the edge of any hoistway landing shall be no greater than 1 1/2 inches.

5:23-7.73 Elevators: car controls

- (a) Car controls shall be readily accessible from a wheelchair.
- (b) Buttons, exclusive of border, shall have a minimum dimension of 3/4 inch, and shall be raised or flush with the operating panel.
- (c) Both a visual and audible signal indicating when each call is registered and answered shall be provided.
- (d) The highest floor buttons shall be mounted at a maximum 4 feet above the floor and the lowest buttons at a minimum of 2 feet 11 inches above the floor. See Figure 7.73a.
  - 1. Exception: If there is a substantial increase in cost as a result of the 4 foot requirement, the highest floor buttons may be mounted at a maximum of 4 feet 6 inches.

(e) Emergency buttons shall be grouped at the bottom of the panel with their centerlines no lower than 2 feet 11 inches.

(f) All control buttons shall be designated by raised standard alphabet characters for letters, arabic characters for numerals, or standard symbols as shown in Figure 7.73b. For additional information see ANSI A17.1 as referenced in Appendix A of building subcode and see also NEII Suggested Minimum Elevator Requirements for the Handicapped. Raised designations shall be placed to the immediate left of the button to which they apply. Permanently attached or applied plates are acceptable. The call button for the main entry floor shall be located in the left-most column designated with a raised star as shown in Figure 7.73b.

(g) Control panels shall be located as shown in Figure 7.73c and d.

5:23-7.74 Elevators: door jamb markings

- (a) Floor designation markings shall be provided at each hoistway entrance on both jambs in compliance with the following:
  - 1. The center lines of characters shall be located 5 feet above finish floor; and
  - 2. Characters shall be a minimum of 2 inches high and shall comply with N.J.A.C. 5:23-7.86 (Signs).
  - 3. Permanently applied plates are acceptable. See Figure 7.74.

5:23-7.75 Elevators: lobby call buttons

- (a) Lobby call buttons shall:
  - 1. Be mounted with centerlines at 3 feet 6 inches above finish floor. See Figure 7.74.
  - 2. Be a minimum of 3/4 inch in diameter;
  - 3. Have both visual and audible signals indicating when a call is registered and answered;
  - 4. Be raised or flush; and
  - 5. Have the button designating "up" mounted on top.
  - 6. Objects mounted beneath lobby call buttons shall not project into the elevator lobby more than four inches.

5:23-7.76 Elevators: hall lanterns

- (a) Audible and visual signals shall be provided at each hoistway entrance to indicate car arrival and its travel direction.
  - 1. Audible signals shall sound once for the up direction and twice for the down direction or shall enunciate the words "up" or "down".
  - 2. Visual signs shall:
    - i. Be mounted with their centerlines a minimum 6 feet above finished floor. Refer to Figure 7.74.
    - ii. Have a minimum dimension of 2 1/2 inches;
    - iii. Distinguish between up and down travel directions; and
    - iv. Be visible from the vicinity of call buttons.
  - 3. In-car lanterns mounted on car door jambs and that comply with N.J.A.C. 5:23-7.74 are acceptable.

5:23-7.77 Elevators: car position indicator and signal

- (a) Audible and visual car position indicators shall be provided within each elevator car as follows:
  - 1. Audible indicators shall:
    - i. Signal as the car passes or stops at each landing. The signal shall exceed the ambient noise level by at least 20 decibels with a frequency below 1,500 Hz; or
    - ii. Provide an automatic verbal announcement.
  - 2. Visual indicators shall:
    - i. Be located above the car operating panel or over the car door;
    - ii. Visually display the floor number as the car passes or stops at a landing;
    - iii. Have characters that are a minimum of 1/2 inch high and that comply with N.J.A.C. 5:23-7.86, except for N.J.A.C. 5:23-7.86(d)2.

5:23-7.78 Elevators: illumination levels

Car controls, platform, car threshold, and landing sill shall be illuminated to a minimum of 5 foot-candles.

## 5:23-7.79 Elevators: intercommunication systems

(a) If provided, emergency intercommunication systems shall comply with the following:

1. The highest operable part of the system shall be located no higher than 4 feet above car floor;
2. The system shall be identified with raised lettering or symbols complying with N.J.A.C. 5:23-7.86 (Signs);
3. If the system employs a handset, a 2 foot 5 inch cord length shall be provided;
4. If the system is located in a closed compartment, the compartment door hardware shall conform to N.J.A.C. 5:23-7.85 (Controls and operating mechanisms);
5. Provide a momentary contact button to allow hearing-impaired individuals to summon assistance.

## 5:23-7.80 Platform lifts

(a) Platform lifts shall:

1. Accommodate an occupied wheelchair within the space provision of N.J.A.C. 5:23-7.100 (Human engineering data). See Figure 7.80.
2. Adjoin an accessible route of travel as specified in N.J.A.C. 5:23-7.16, (Accessible routes, walks and floors), and have a five foot long and five foot wide level, clear area meeting the criteria of N.J.A.C. 5:23-7.16 immediately adjacent to the entry and exit points for the lift on each level it serves.
3. Have accessible controls complying with N.J.A.C. 5:23-7.85, (Controls and operating mechanism).
4. Shall meet the technical criteria of N.J.A.C. 5:23-7.81.

## 5:23-7.81 Technical criteria for platform lifts

- (a) The capacity of a platform lift shall not exceed one person. The rated load of the lift shall not be less than 350 pounds.
- (b) The rated speed of lift shall not exceed 40 feet per minute.
- (c) The platform shall comply with N.J.A.C. 5:23-7.22 (Floor surfaces). If required, a ramp shall be provided for access to the platform. Such ramp shall comply with N.J.A.C. 5:23-7.23.
- (d) The device shall be supported in place and maintained so as to prevent any part from becoming loose or displaced. Adequate support shall be provided to maintain the platform of the device in a level position at all times.

(e) The frame and platform of a device shall be constructed of substantial material capable of withstanding stresses of five times the rated load of the device.

(f) Guarding around the lift shall be provided as follows:

1. The area around the top and bottom landings of a lift shall be protected by a barrier at least 42 inches high and shall be equipped with an entrance door or gate;
2. The barrier may be solid, or of open work material less than 2 inches in its longer dimension, and shall be of substantial strength to withstand a lateral force of 250 pounds;
3. Entrance doors or gates shall be self-closing and self-locking and shall be equipped with an electric contact that will stop the device if the gate is opened;
4. Entrance doors or gates shall be at least 42 inches in height;
5. Maximum pressure required to open the doors or gates shall not exceed eight pounds.

(g) The landings shall be so lighted that the illumination at the landings, when the lift is in service, shall be not less than 5 foot-candles.

(h) The following controls and electrical equipment are required:

1. The operating control shall be of the constant pressure type;
2. Where suspended by wire rope or chain, a slack rope safety switch shall be provided;
3. Limit switches shall be provided to stop the device at upper and lower terminal landings;
4. Where the device is exposed to the outside elements all operating components shall be enclosed in a weatherproof enclosure;
5. The device shall not be key-operated.

## 5:23-7.82 Drinking fountains and water coolers

(a) If drinking fountains or water coolers are provided, 50 percent of those provided on each accessible floor, but not less than one, shall comply with this section. Accessible drinking fountains and water coolers shall be dispersed throughout the floor.

(b) Accessible drinking fountains and water coolers shall be mounted in clear floor spaces as follows:

1. Cantilevered units shall have a clear space allowing a forward approach as specified in Figures 7.82a and b. Such units shall also be designed and mounted to provide knee space under the unit, that is at least 27 inches high, 30 inches wide, and 17 inches deep.

2. Free standing or built-in units shall have clear space allowing a parallel approach as specified in Figures 7.82c (1 and 2) and d. Knee space is not required for this type of unit.

3. Cantilevered units shall not reduce the clear floor space as required by N.J.A.C. 5:23-7.19.

(c) Water spouts on accessible drinking fountains shall:

1. Be mounted no higher than 3 feet above the finished floor, measured to the water outlet of the spout;
2. Be at the front of the unit and shall direct water flow trajectory to provide easy access to the water flow;
3. Direct water flow at least 4 inches above the unit basin to facilitate cup or glass insertion.

(d) Unit controls shall be front mounted or side mounted near the front edge and shall comply with N.J.A.C. 5:23-7.85 (Controls and operating mechanisms).

## 5:23-7.83 Telephones

(a) On accessible floors, each separately located public telephone and at least one public telephone in each bank (two or more telephones) shall comply with this section.

(b) Clear floor space shall be provided at each accessible telephone in compliance with Figures 7.83a, b, and c. These clear spaces shall not be restricted by installation of bases, fixed seats, or enclosures.

(c) Telephone equipment shall:

1. Be mounted so that the highest operating control or coin slot is located at a maximum of 54 inches above the finished floor if the phone can be reached by a person in a wheelchair using a parallel approach. If a telephone can only be reached using a forward approach, the highest operating control shall be located at a maximum of 4 feet. See Figures 7.83d, e, f, and g for minimum space requirements and mounting heights;
2. Be equipped with push button controls;
3. Have minimum hand set cord length of 29 inches.

(d) One public telephone in each bank of public telephones shall be equipped with an adjustable volume control for the hearing impaired with instructions for its use.

## 5:23-7.84 Seating, tables, and work surfaces

(a) If fixed seating or tables are provided, at least five percent of each shall comply with this section. If work stations are provided, five percent of the stations and/or five percent of the lineal footage work surface shall comply with this section.

(b) Seating spaces for people in wheelchairs and tables, counters, or work surfaces shall:

1. Provide a clear floor space to accommodate a single occupied wheelchair, the minimum dimensions of which shall be 2 feet 6 inches and 4 feet long. See Figure 7.84a.
2. Have knee spaces that are at least 30 inches high, 30 inches wide, and 19 inches deep. The clear access space requirement and the knee space requirement may overlap 19 inches. See Figure 7.84b.
3. Have table tops or work surfaces mounted no higher than 34 inches above the finished floor.
4. Adjoin an accessible route of travel or another clear accessible floor space for at least one full, unobstructed side.

## 5:23-7.85 Controls and operating mechanisms

(a) If controls and operating mechanisms are provided for use by the general public or by building occupants, each shall comply with this section.

(b) Accessible controls and operating mechanisms shall adjoin clear accessible floor space or accessible routes of travel. Controls and operating mechanisms shall be mounted in accordance with approach direction and reach limitations as specified in Figures 7.85a and b.

(c) Controls and operating mechanisms shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than five pounds.

(d) If specialized mechanical, electrical, or process equipment has inherent functional requirements which dictate location or force requirements other than those specified in this section, the provisions of this section are excepted.

## 5:23-7.86 Signs

(a) The International Symbol of Accessibility shall be displayed in a manner complying with this section at the following locations:

1. Parking spaces designated as reserved for the handicapped;
2. Passenger loading zones;
3. Accessible entrances;
4. Accessible toilet and bathing facilities, except in individual units in Use Groups I and R.

- (b) All informational signs provided shall comply with this section.
- (c) Letters and numbers on sign systems shall:
  1. Have a width-to-height ratio of between 3:5 and 1:1;
  2. Have a stroke width-to-height ratio of between 1:5 and 1:10;
  3. Contrast in value with their backgrounds, preferable light letters on a dark background;
  4. Have a matte finish on a matte finish background.
- (d) Characters on signs shall be:
  1. Raised or incised from the background surface 1/32 inch. Symbols and pictographs shall be incised or raised in this manner;
  2. Between 5/8 inch and 2 inches high;
  3. Block type with sharply defined edges;
  4. Provided with at least 1/4 inch stroke width, if incised.
- (e) Signs shall be placed in a standardized location throughout a building or facility as follows:
  1. Interior signs shall be located alongside of the door on the latch side and shall be mounted at between 4 feet 6 inches and 5 feet 6 inches above finished floor. See Figure 7.86a.
  2. Exterior signs shall be installed at entrances and walks to direct individuals to accessible routes and entrances;
  3. Exterior signs shall be installed at vehicular entrances to direct disabled motorists to accessible parking areas.
- (f) Identification of accessible facilities shall be by means of display of the International Symbol of Accessibility. The symbol shall be displayed as shown in Figures 7.86b and c.

Minimum dimensions for the symbol shall be as follows:

Location	Minimum Size
Interior	2 1/2 inches
Exterior	8 inches

5:23-7.87 Assembly areas

- (a) Assembly areas shall comply with this section. Assembly areas shall provide the number of accessible viewing positions as specified in Table 7.87.
  1. Size and location of viewing positions. Accessible viewing positions shall:
    - i. Provide minimum level clear floor or ground areas as shown in Figures 7.87a and b;
    - ii. Accommodate one occupied wheelchair or one portable seat to accommodate persons with crutches or leg braces;
    - iii. Be in an adjoining configuration if only two positions are provided. If additional positions are provided, these additional positions may be in single position configurations;
    - iv. Be an integral part of the seating plan and shall be dispersed throughout the assembly area providing sight lines comparable to those for all seating;
    - v. Adjoin an accessible route of travel to an accessible entrance;
    - vi. Have surfaces that comply with N.J.A.C. 5:23-7.22 (Ground and floor surfaces);
    - vii. Exception: In alteration work where it is structurally impossible to alter seating locations to disperse seating throughout, seating may be located in congregate areas as structurally feasible. Seating must adjoin an accessible route.
  2. Accessible routes that comply with N.J.A.C. 5:23-7.16 (Accessible routes, walks and floors) must be provided to performing areas, including but not limited to stages, arena floors, dressing rooms, locker rooms, and other rooms and spaces required for use of the assembly area.
    - i. Exception: In alteration work where it is structurally impracticable to alter all performing areas to be on an accessible route, at least one of each type shall be made accessible.
  3. Assembly areas shall be provided with a listening system to assist no fewer than two persons with severe hearing loss.
    - i. If the listening system serves individual seats, such seats shall be located within 50 feet of the state or arena. Such locations shall provide a complete view of the stage or arena.
    - ii. Acceptable types of listening systems include, but are not limited to, audio loops, laser, and radio frequency systems.

TABLE 7.87

Assembly Area Seating Capacity	No. of Accessible Viewing Positions
1-25	1
26-50	2
51-75	3
76-100	4
101-1000	Two percent of total rounded off to next higher whole number, but not less than 5.
Over 1000	20 plus one for each additional 100.

5:23-7.88 Mercantile-fitting/dressing rooms

In each department (for example, sportswear, swimsuits, lingerie, etc.) where fitting rooms are provided, at least one fitting/dressing room shall be made accessible and of a size 5 feet by 5 feet (minimum) with a clear opening of 43 inches minimum. Hardware on fitting room doors shall comply with N.J.A.C. 5:23-7.46.

5:23-7.89 Residential occupancy

(a) Buildings in Use Groups R-1 and R-2, except as exempted by N.J.A.C. 5:23-7.3, shall be made accessible to handicapped persons as specified in N.J.A.C. 5:23-7.9 and 7.10. N.J.A.C. 5:23-7.90 through 5:23-7.98 delineate technical criteria for accessible units, minimally accessible units and adaptable units.

5:23-7.90 Residential accessibility units

Residential accessibility units shall meet all technical criteria of other sections of this subchapter plus the specific requirements of N.J.A.C. 5:23-7.91 through 5:23-7.98.

5:23-7.91 Accessible units: kitchens

(a) Kitchens shall contain a minimum of 5 feet by 5 feet clear floor space that allows either a forward or a parallel approach by a person in a wheelchair to all appliances provided in the kitchen. Toe spaces under cabinets may be counted as clear floor space if such clear space is a minimum of 8 3/4 inches high.

(b) There shall be at least one work station a minimum of 30 inches wide by 24 inches deep meeting knee clearance criteria of N.J.A.C. 5:23-7.84.

(c) All controls for appliances, sinks, and other equipment shall comply with N.J.A.C. 5:23-7.85 (Controls and operating mechanisms).

(d) Sink cabinet(s) shall be provided with a removable assembly which, when removed, will provide appropriate knee clearance as specified in N.J.A.C. 5:23-7.84. The sink and the counter of the sink cabinet shall be adjustable to a height of 32 inches, measured from the top of the counter to the finished floor.

1. There shall be no sharp or abrasive surfaces under sinks. Hot water and drain pipes under sinks shall be insulated or otherwise covered.

(e) Refrigerators/freezers, if provided, shall be fully self-defrosting.

(f) Ovens shall be self-cleaning.

(g) Wall cabinets shall be installed 15 inches above the counter tops of base cabinets. Shelving within wall cabinets shall be adjustable.

5:23-7.92 Accessible units: closets

Within closets of accessible units, any shelving or clothes rods provided shall be mounted at or adjustable to positions as specified in Figure 7.92.

5:23-7.93 Accessible units: bathrooms

All bathrooms within accessible units shall comply with N.J.A.C. 5:23-7.51.

5:23-7.94 Residential adaptable units

(a) Adaptable units shall meet the following technical criteria:

1. Interior passage and bathroom doors shall provide a clear opening of not less than 30 inches when the door is open 90 degrees as measured between the edge of the door and the latch side stop.

2. The corridor widths within the units shall be a minimum of 36 inches.

5:23-7.95 Adaptable units: kitchens

(a) Kitchens in adaptable units shall be on an accessible route and shall meet the following criteria:

1. Clearances between all opposing base cabinets, counter tops, appliances, or walls shall be 40 inches minimum, except in U-shaped kitchens, where such clearances shall be 60 inches minimum.

(b) A clear floor space at least 30 inches by 48 inches complying with N.J.A.C. 5:23-7.16 that allows either a forward or a parallel approach by a person in a wheelchair to all appliances in the kitchen shall be provided.

(c) All controls for appliances, sinks and other equipment shall comply with N.J.A.C. 5:23-7.85 (Controls and operating mechanisms).

(d) At least one 30 inch section of counter shall provide a work surface that complies with the following requirements:

1. The counter shall be adjustable or replaceable as a unit to provide alternative heights of 28 inches, 32 inches, and 36 inches measured from the floor to the top of the counter surface;
2. Base cabinets, if provided, shall be removable under the full 30 inches minimum frontage of the counter. The finished floor shall extend under the counter to the wall;
3. Counter thickness and supporting structure shall be two inches maximum over the required clear area;
4. A clear floor space 30 inches by 48 inches shall allow a forward approach to the counter. Nineteen inches maximum of the clear floor space required may extend underneath the counter. The knee space shall have a minimum clear width of 30 inches and a minimum clear depth of 19 inches;
5. There shall be no sharp or abrasive surfaces under such counters.

(e) The sink and surrounding counter shall comply with the following requirements:

1. The sink and surrounding counter shall be adjustable or replaceable as a unit to provide alternative heights of 28 inches, 32 inches, and 36 inches, measured from the floor to the top of the counter surface or sink rim. The total width of sink and counter area shall be 30 inches minimum;
  2. Rough-in plumbing shall be located to accept connections of supply and drain pipes for sinks mounted at the height of 28 inches;
  3. The depth of a sink bowl shall be no greater than 6½ inches. Only one bowl of double- or triple-bowl sinks must meet this requirement;
  4. Base cabinets, if provided, shall be removable under the full 30 inch minimum frontage of the sink and surrounding counter. The finished flooring shall extend under the counter to the wall;
  5. Counter thickness and supporting structure shall be 2 inches maximum over the required clear space;
  6. A clear floor space 30 inches by 48 inches shall allow forward approach to the sink. Nineteen inches maximum of the clear floor space may extend underneath the sink. The knee space shall have a minimum clear width of 30 inches and a clear depth of 19 inches;
  7. There shall be no sharp or abrasive surfaces under sinks. Hot water and drain pipes under sinks shall be insulated or otherwise covered.
- (f) Refrigerator/freezers, if provided, shall be fully self-defrosting.  
(g) Ovens shall be self-cleaning.

5:23-7.96 Adaptable units: bathrooms

(a) Each bathroom shall be on an accessible route and shall meet the requirements of this section.

(b) Doors shall not swing into the clear floor space required for any fixture.

(c) Water closets shall have the following features:

1. Clear floor space at the water closet shall be as shown in Figure 7.96a. The water closet may be located with the clear area at either the right or left side of the toilet;
2. The water closet shall be mounted with the top of the flood rim 14 to 15 inches (industry standard) above the finished floor;
3. Structural reinforcement or other provisions that will allow installation of grab bars shall be provided in the locations shown in Figure 7.96b. If provided, grab bars shall be installed as shown in Figure 7.55c and d;
4. The toilet paper dispenser shall be installed within reach as shown in Figure 7.96b.

(d) Lavatory, mirrors, and medicine cabinets shall have the following features:

1. The lavatory and mirrors shall comply with N.J.A.C. 5:23-7.58 and 7.59;
2. If a cabinet is provided under the lavatory, then it shall be removable to provide the clearances specified in N.J.A.C. 5:23-7.58;
3. If a medicine cabinet is provided above the lavatory, then the bottom of the medicine cabinet shall be located with a usable shelf no higher than 44 inches above the floor.

(e) If a bathtub is provided, then it shall have the following features:

1. Clear floor space at bathtubs shall be as shown in Figures 7.61a, b and c;
2. An in-tub seat or a seat at the head of the tub shall be provided as shown in Figures 7.61a, b and c. Seats shall be mounted securely and shall not slip during use;
3. Structural reinforcement or other provisions that will allow installation of grab bars shall be provided in the locations shown in Figures 7.96c and d. If provided, grab bars shall be installed as shown in Figures 7.67a and b.

4. Faucets and other controls shall be located as shown in Figure 7.61h and shall comply with N.J.A.C. 5:23-7.85.

(f) If a shower is provided, it shall have the following features:

1. Shower stall size and clear floor space shall comply with either Figure 7.61d or 7.61e. The shower stall shall be a minimum of 36 inches by 36 inches;
2. Structural reinforcement or other provisions that will allow installation of grab bars shall be provided in the locations shown in Figure 7.96e or 7.96f;
3. Faucets and other controls shall be located as shown in Figure 7.96e or 7.96f, and shall comply with 5:23-7.85.

5:23-7.97 Adaptable units: consumer information

(a) To ensure that the existence of adaptable features will be known to the owner or occupant of a dwelling, the following consumer information shall be provided in each accessible dwelling unit for rent or sale:

1. Notification of the alternate heights available for the kitchen counter and sink, and the existence of removable cabinets and bases, under counters, sinks, and lavatories;
2. Notification of the provisions for the installation of grab bars at toilets, bathtubs, and showers;
3. Notification that the dwelling unit is equipped to have a visual emergency alarm installed;
4. Identification of the location where information and instructions are available for changing the height of counters, removing cabinets and bases, installing a visual emergency alarm system, and installing grab bars, and installing a ramp where appropriate;
5. In addition, the renters and buyers of accessible dwelling units shall be provided with the following information:
  - i. Instruction for adjusting or replacing kitchen counter and sink heights and for removing cabinets;
  - ii. A scale drawing showing the location of adjustable or replaceable counter areas and removable cabinets;
  - iii. Identification of the location of any equipment and parts required to adjusting or replacing counter tops, cabinets, and sinks;
  - iv. A scale drawing showing methods and locations for the installation of grab bars;
  - v. Instructions for installing a visual emergency alarm system, if the dwelling unit is equipped for such an installation.
6. Construction documents for the unit shall also include a design for the future modification of the entrance to provide accessibility. Any level platform(s) or ramp(s) included in the design shall meet provisions of N.J.A.C. 5:23-7.23.

5:23-7.98 Residential minimally accessible units

(a) Units required to be minimally accessible shall be required to meet the following technical criteria:

1. Interior passages and bathroom doors shall provide a clear opening of not less than 30 inches when the door is open 90 degrees as measured between the edge of the door and the latch side stop;
2. The corridor widths within the units shall be a minimum of 36 inches;
3. Kitchens shall have a clear floor space of at least 30 inches by 48 inches adjoining an accessible route of travel or a hallway at least 36 inches wide. This space shall be arranged to allow either a forward or a parallel approach by a person in a wheelchair to all appliances in the kitchen including, but not limited to, the sink, range, oven, refrigerator/freezer;
4. Bathrooms shall comply with the minimal accessibility criteria of N.J.A.C. 5:23-7.63.

5:23-7.99 Alarms

(a) If alarm systems are provided, each shall comply with the following:

1. Audible alarms shall produce a sound pressure level that exceeds ambient room or space noise by 15 decibels or any maximum noise level of 30 second duration by 5 decibels, whichever is greater. Sound levels for alarm signals shall not exceed 120 decibels.
2. If audible alarms are provided, then in addition, a visual alarm device adjacent to or within each exit sign which flashes in conjunction with audible alarms and operates from the same power source shall also be provided. Flash frequency of visual alarms shall be less than 5 Hz. If such alarms use electricity from the building as a power source, then they shall be installed on the same system as the audible emergency alarms. Specialized systems utilizing advanced technology such as tactile alarms may be substituted for visual alarms if equivalent protection is afforded handicapped users of the building or facility.
3. All hotels and motels, regardless of the number of units, shall have available at least one portable visual alarm type smoke detector for the

deaf or hearing impaired for each 50 units or less. The proprietor may require a refundable deposit for such portable smoke detector not to exceed the value of the smoke detector. Visual notification of availability shall be provided.

4. Alarm pull stations shall comply with N.J.A.C. 5:23-7.85 (Controls and operating mechanisms).

#### 5:23-7.100 Human Engineering Data

EDITOR'S NOTE: Human Engineering Data consists solely of diagrams (Figures 7.100a through 7.100p) concerning dimensions for Two-Way Passage, 180°/360° Turns, 90° Turn, Ground Space, Forward Approach, Parallel Approach, Alcoves, Reach Over Obstacles, Reach, Manoeuvring Clearances, and Turn-Manoeuvring Clearance.

#### 5:23-7.101 Recreation

All buildings, structures, facilities, equipment, and sites or portions thereof, intended for indoor or outdoor, active or passive recreation shall meet all applicable requirements of this subchapter in addition to the provisions of N.J.A.C. 5:23-7.102 through 5:23-7.117.

#### 5:23-7.102 Recreation: definitions

"Park" or "recreation area" means an area set aside and designated for recreation, including either active participation, as in sports, or passive recreation, as in the observation of nature.

"Recreation facility" means any building, structure, body of water, dock, court, field, location, or portion thereof, intended for active or passive recreation.

"Support facility" means a facility ancillary to a recreation facility including, but not limited to, toilet facilities, food services, information services, first aid stations, drinking fountains, telephones, and shelters. Facilities primarily housing mechanical equipment or those exclusively used for storage are not included in this definition.

"Recreation equipment" means all recreation equipment and prescribed surrounding safety areas, including, but not limited to, moving ride equipment, fixed equipment, fixed manipulated play equipment, picnic tables, benches, fire places and grills, ski lifts, and aerial tramways.

"Site access points" means all entrances, waiting areas, drop-off zones, parking areas, and public transportation stops serving the recreational area or facility, except those used solely for maintenance purposes.

"Undeveloped areas" means wilderness, camping, or hunting areas without toilet facilities with plumbing. If such areas contain toilet facilities with plumbing, they are considered developed.

#### 5:23-7.103 Recreation: exceptions

These recreation requirements do not apply to undeveloped areas as defined in N.J.A.C. 5:23-7.102. These requirements also shall not apply to recreation buildings, structures, facilities, and equipment which are on the site of a residence in Use Group R-3.

#### 5:23-7.104 Recreation: route of travel

There shall be an accessible route of travel connecting the following elements: Recreation facilities, support facilities, recreation equipment and site access points.

#### 5:23-7.105 Recreation: pools

(a) All pools intended for swimming, soaking, wading, or diving, exclusive of those intended for ornamental, decorative, or mechanical purposes, must adjoin an accessible route of travel. The interior of swimming pools, defined as pools with singular or multiple depth ranging between 19 inches and 13 feet, and the interior of soaking pools shall be made accessible by one of the methods detailed in 1. through 4. below. Wading pools, defined as pools with a maximum depth less than 24 inches, and diving pools, defined as pools or tanks whose minimum depth is over 13 feet, are excluded from this interior access requirement.

1. A vertical lift meeting the following criteria and as shown in Figure 7.105a:

i. Designed by its manufacturer for independent operation by the user.

ii. Equipped with a chair designed for independent transfer from a wheelchair. The chair shall have a rigid seat with a depth of at least 15 inches and shall have a rigid back support at least 15 inches high;

(1) As an alternative to ii. above, a pool may be equipped with a moving platform meeting the criteria of N.J.A.C. 5:23-7.81.

iii. Adjoin a clear level floor area meeting the criteria of N.J.A.C. 5:23-7.16 whose minimum dimensions are 5 feet by 5 feet;

iv. Has controls which meet the criteria of N.J.A.C. 5:23-7.81;

v. Is located to meet the criteria of Figure 7.105a.

2. Interior/exterior steps meeting the criteria of Figure 7.105b.

3. A ramp meeting the criteria of N.J.A.C. 5:23-7.23 and Figure 7.105c.

4. A wheelchair shall be provided to the user if the moving platform or ramp option is used.

#### 5:23-7.106 Recreation: swimming and skating areas

(a) Where swimming and/or skating areas are provided at natural or man-made bodies of water, there shall be an accessible route of travel connecting site access points, support facilities, any beach, and the water's edge.

(b) Where swimming is provided, there shall be a ramp leading into the water to a depth of 3 feet. The ramp shall meet the criteria of N.J.A.C. 5:23-7.23 and of Figure 7.105c except that handrails shall not be provided. Visual markings for the underwater portion of the ramp, such as floats or flags, shall be provided to define the side edges. Alternately, means of access to a minimum water depth of 3 feet may be achieved by other methodologies as specified in N.J.A.C. 5:23-7.105. This provision shall not apply in those ocean front areas where wave action would render the provision of a ramp impractical from an engineering standpoint.

#### 5:23-7.107 Recreation: boating areas

(a) Each boating area with docking facilities shall have one accessible mooring space.

(b) Each accessible mooring space shall adjoin an accessible route of travel and shall have a minimum clear space of 5 feet by 5 feet to allow transfer to the boat. Additionally, each accessible mooring space shall be a maximum of 48 inches above the mean water level in tidal areas, 24 inches in non-tidal areas.

(c) Service areas and pick-up areas, if provided, shall adjoin an accessible route of travel.

#### 5:23-7.108 Recreation: fishing areas

(a) If docks are provided in a fishing area, the criteria of N.J.A.C. 5:23-7.107 shall apply.

(b) If docks are not provided in a fishing area, there shall be, within each area designated by signage for fishing, at least one level, stable, hard surfaced space at the water's edge at least 6 feet by 6 feet adjoining an accessible route of travel.

#### 5:23-7.109 Recreation: court games

(a) The surface of the court must adjoin an accessible route of travel. Entrances shall meet criteria of N.J.A.C. 5:23-7.37.

(b) Court surfaces shall meet the criteria of N.J.A.C. 5:23-7.16 except in those instances where the recognized rule of the particular game dictate another surface.

#### 5:23-7.110 Recreation: ice rinks and roller rinks

The surface of the rink shall adjoin an accessible route of travel.

#### 5:23-7.111 Recreation: playing fields

(a) There shall be an accessible route of travel to each playing field and the surface of each field shall adjoin such route of travel. For an overlay field, an accessible route of travel to the primary field shall fulfill the requirements of this section. For a complex of playing fields in a single area, an accessible route of travel to the area shall fulfill the requirements of this section. This provision, however, shall not be construed to negate the requirement for an accessible route of travel to any spectator viewing areas provided for fields in the complex.

#### 5:23-7.112 Recreation: golf facilities

(a) There shall be an accessible route of travel connecting the golf course and support facilities.

(b) Bridges, if provided, shall either be designed for use by golf carts or shall meet criteria of N.J.A.C. 5:23-7.23.

(c) Where curbs are provided at points where courses cross thoroughfares, ramps or curb ramps meeting the criteria of N.J.A.C. 5:23-7.23 shall be provided.

#### 5:23-7.113 Recreation: ski lifts, aerial tramways, and conveyors

(a) There shall be an accessible route of travel, which may be compacted snow where applicable, connecting pick-up areas, support facilities, and the moving seat, car, or platform of ski lifts, aerial tramways, conveyors, and comparable mechanisms. A 5 foot by 5 foot clear, level area meeting the criteria of N.J.A.C. 5:23-7.16 shall be provided immediately adjacent to the upper, lower, and any intermediate terminals of such mechanisms to facilitate transfer from a wheelchair to the seat, car, or platform. If seats are involved, they shall be at a height of 16 inches to 18 inches above the clear, level area.

(b) There shall be a control immediately available to the operator of the ski lift, aerial tramway or conveyor to stop and restart the mechanism to allow the transfer of a disabled person on and off.

#### 5:23-7.114 Recreation: trails

(a) Trails through otherwise undeveloped areas, primarily for the purposes of hiking or wilderness experiences, are exempted from recreation requirements.

(b) All other trails shall meet the criteria of N.J.A.C. 5:23-7.16.

(c) Signs, where provided, shall meet the criteria of N.J.A.C. 5:23-7.86.  
5:23-7.116 Recreation: camping sites

(a) In camping areas considered as developed as defined in N.J.A.C. 5:23-7.102, at least four percent (rounded off to the nearest, higher whole number) of camp sites within each camping area shall meet the following criteria:

1. There shall be an accessible route of travel connecting these accessible camp sites with site access points and support facilities;
2. Sites and signs leading to such sites shall be marked with the International Symbol of Accessibility displayed as specified in N.J.A.C. 5:23-7.86;
3. Where tent platforms are provided, each shall be equipped with a ramp meeting the criteria of N.J.A.C. 5:23-7.23;
4. The accessible camp sites shall be distributed throughout the camping area.

5:23-7.116 Recreation equipment

(a) There shall be an accessible route of travel connecting site access points, recreation facilities, support facilities, and each piece of recreation equipment. For each piece of recreation equipment whose manufacturer

specifies a surrounding, resilient safety area, providing access to the edge of that safety area shall constitute compliance with the requirements of this section.

(b) Sand and gravel shall not be used within resilient safety areas.

(c) At least 25 percent of all play equipment within each play area shall be the type specified by the manufacturer as totally usable by both disabled and non-disabled persons.

(d) As existing playground equipment is replaced, at least 50 percent of the replacement equipment shall be of a type specified by the manufacturer as totally usable by both disabled and non-disabled persons until the percentage as specified in (c) above is met.

5:23-7.117 Recreation: equestrian facilities

At the area normally used for mounting at each recreational equestrian facility, a mounting platform for the disabled shall be provided. The top of the platform shall be at a height 42 inches above the surface upon which the horse stands. The mounting platform shall have a minimum dimension of 5 feet long and 3 feet wide. Any ramp necessary to provide access to the mounting platform shall meet the criteria of N.J.A.C. 5:23-7.23 except that a minimum slope of 1:9 shall be allowable.

Figure 7.18b  
Turn-Maneuvering Clearance

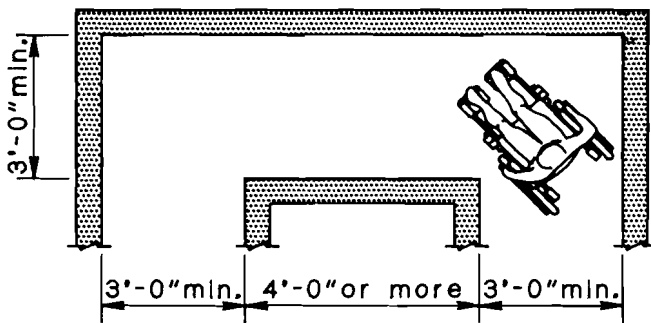


Figure 7.18c  
Turn-Maneuvering Clearance

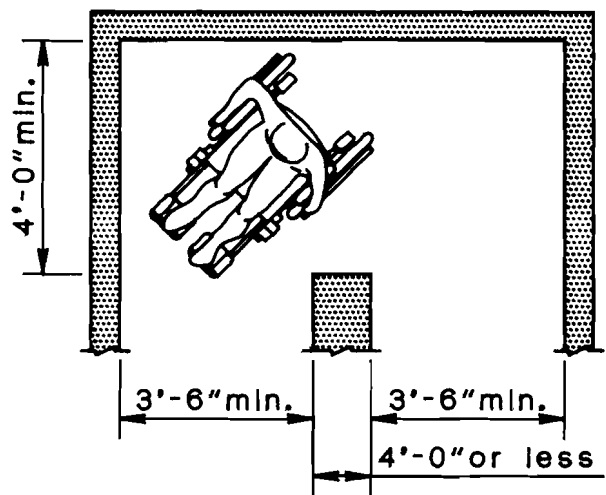


Figure 7.30a  
Curb Ramp

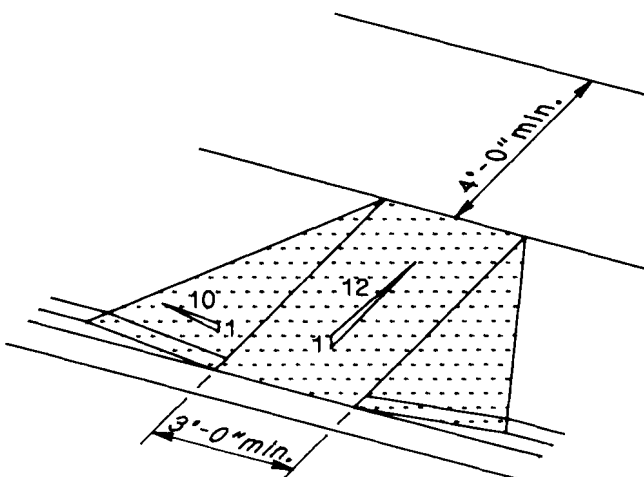


Figure 7.30b  
Curb Ramp

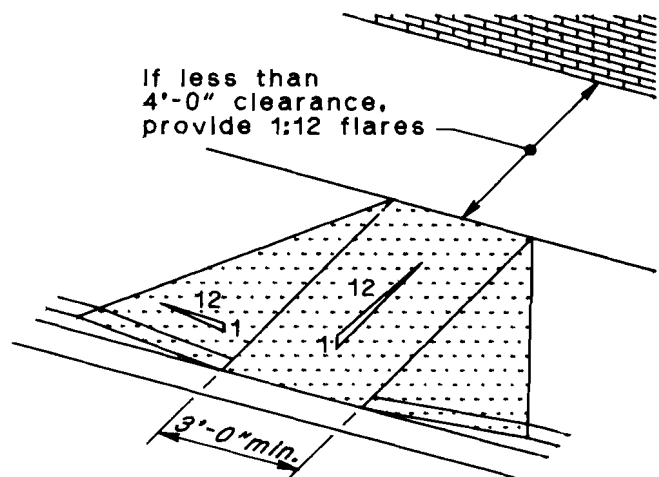


Figure 7.30c  
Curb Ramp (returned)

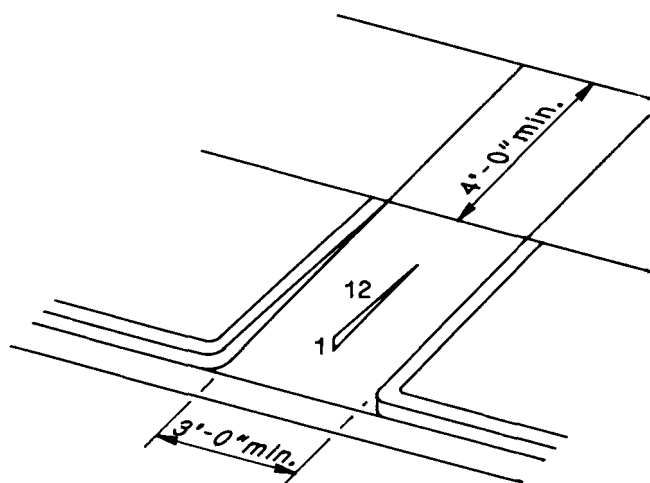


Figure 7.30d  
Curb Ramp

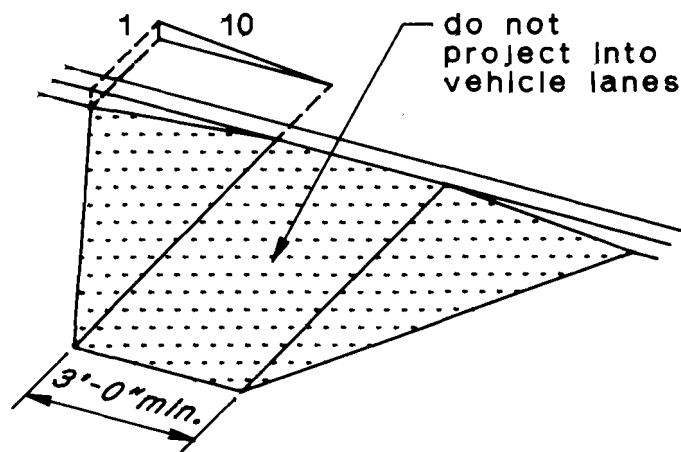


Figure 7.31a  
Handrail

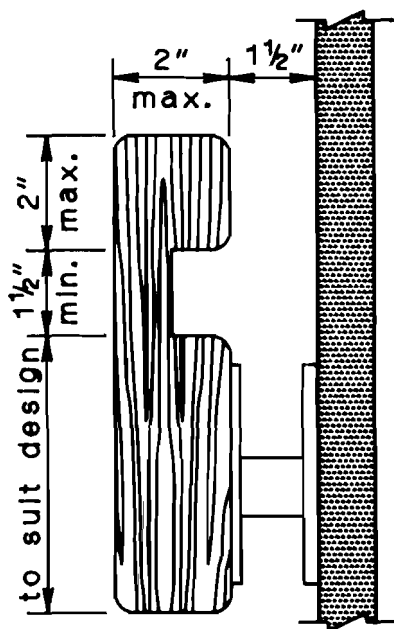


Figure 7.31e  
Recessed Handrail

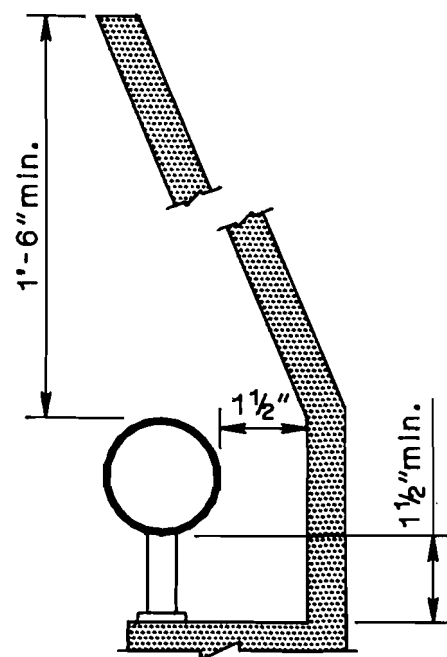


Figure 7.43b  
Hinge Approach

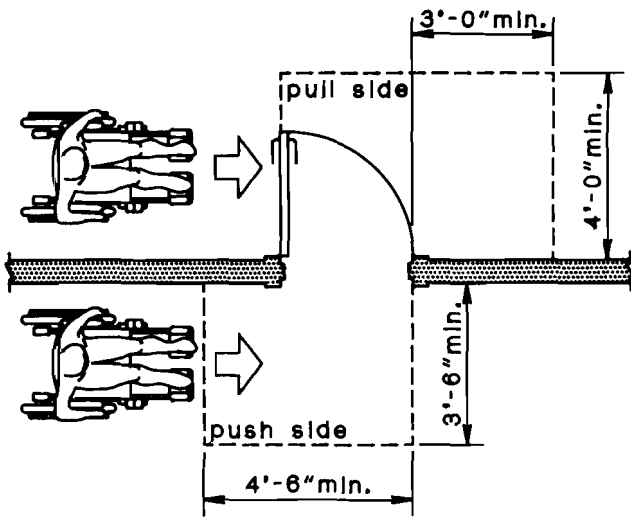


Figure 7.43c  
Latch Approach

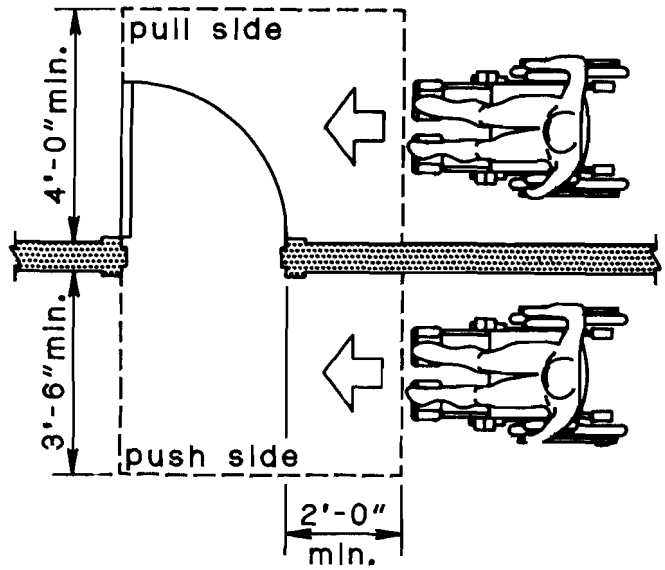


Figure 7.54a.  
180°/360°

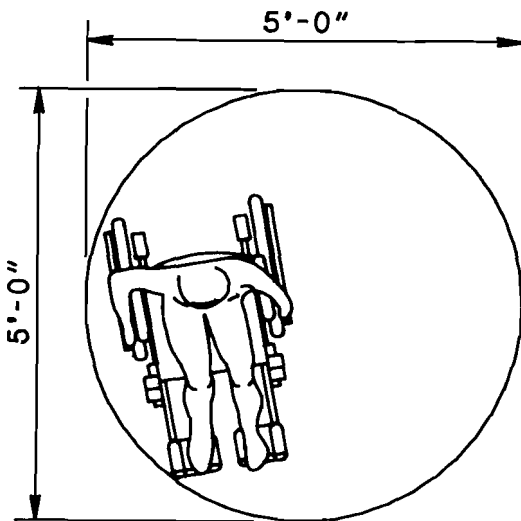


Figure 7.55a.  
Clear Floor Space

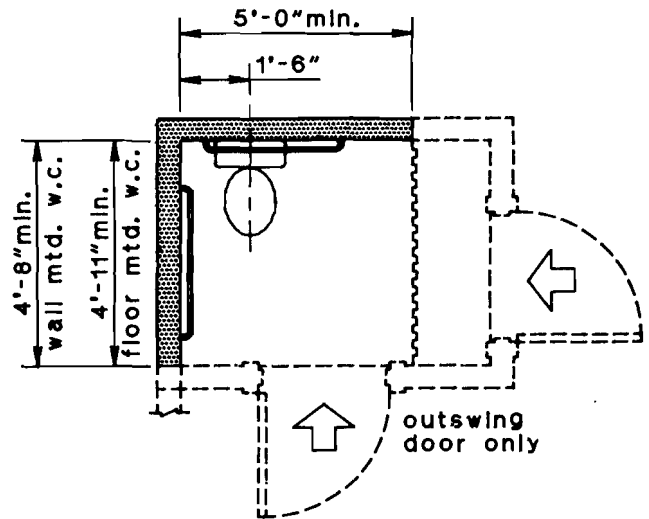


Figure 7.55b.  
Clear Floor Space

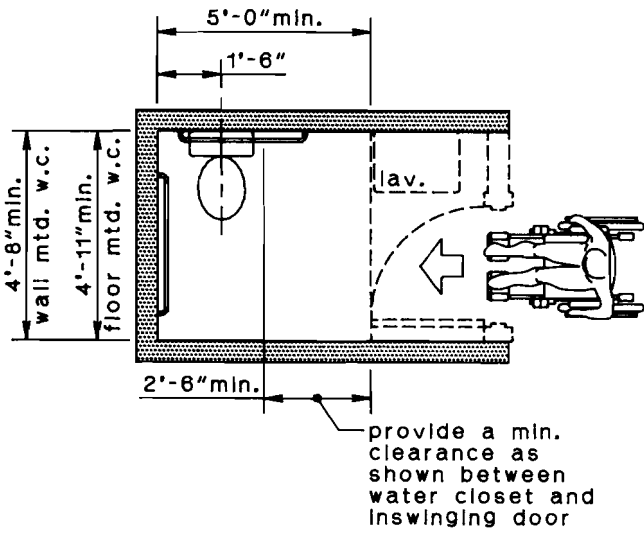


Figure 7.55c.  
Rear Wall Elevation

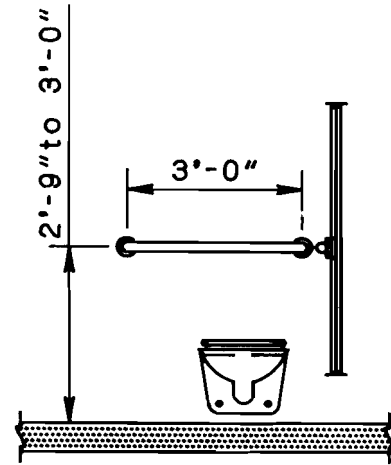


Figure 7.55d.  
Side Wall

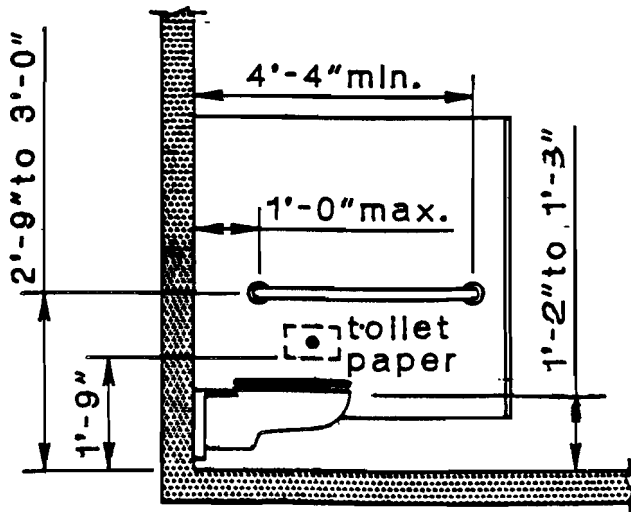


Figure 7.56a.  
Standard Stall

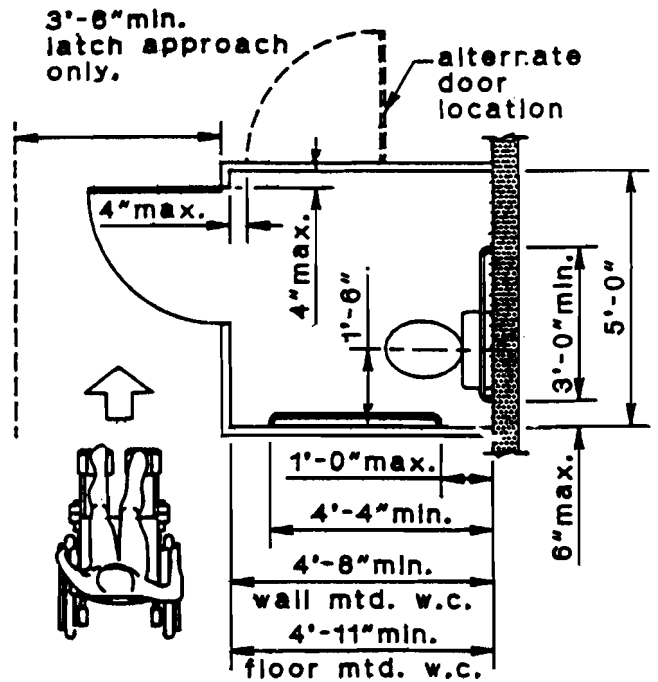


Figure 7.56b.  
Alternate Stall

3'-6" min.  
latch approach  
only.

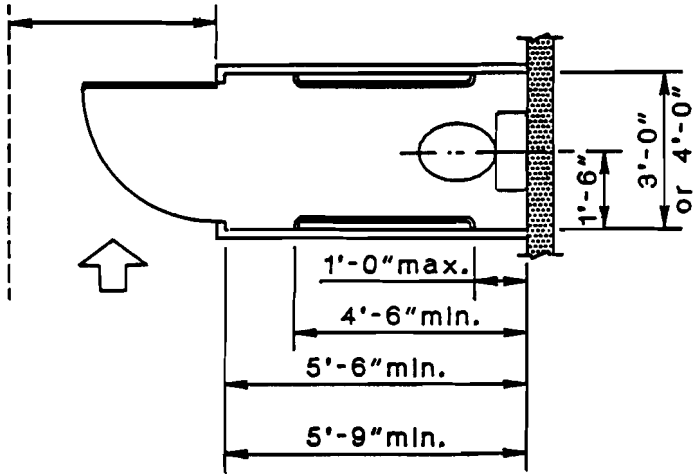


Figure 7.56c.  
Rear Wall Elevation

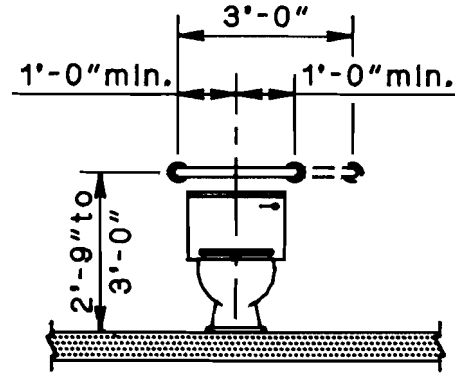


Figure 7.56d.  
Side Wall

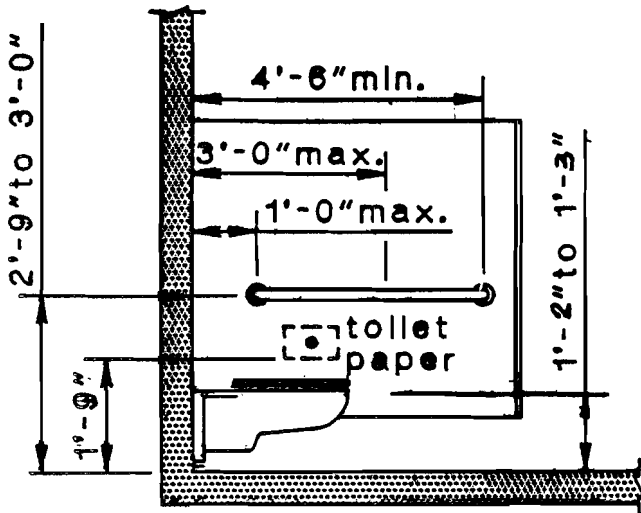


Figure 7.57a.  
Urinal Shields

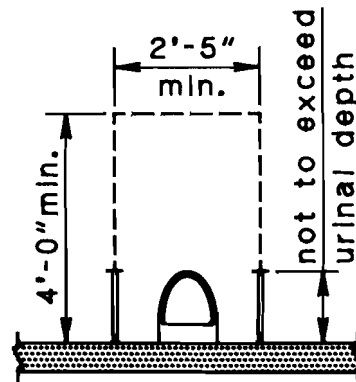


Figure 7.58a.  
Lavatory

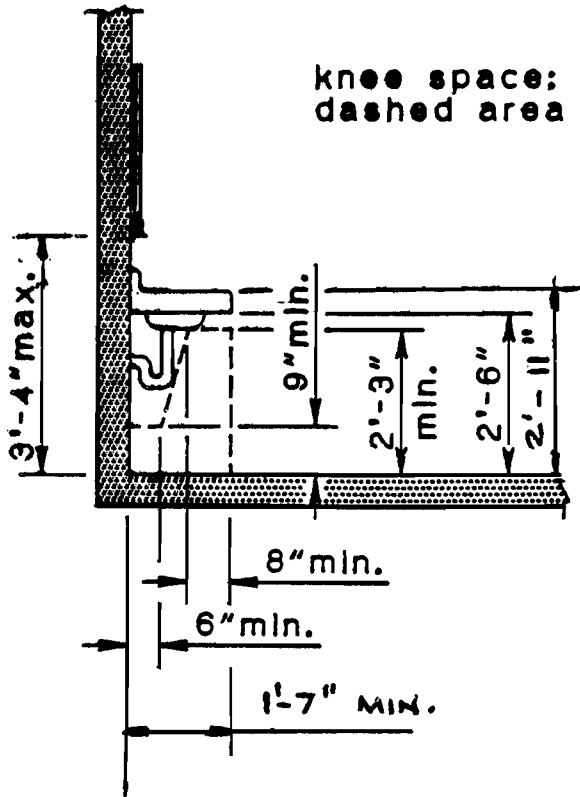


Figure 7.58b.  
Lavatory

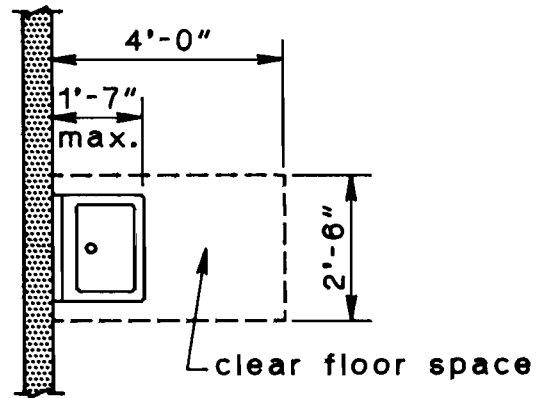


Figure 7.61a.  
Clear floor space with ledge seat

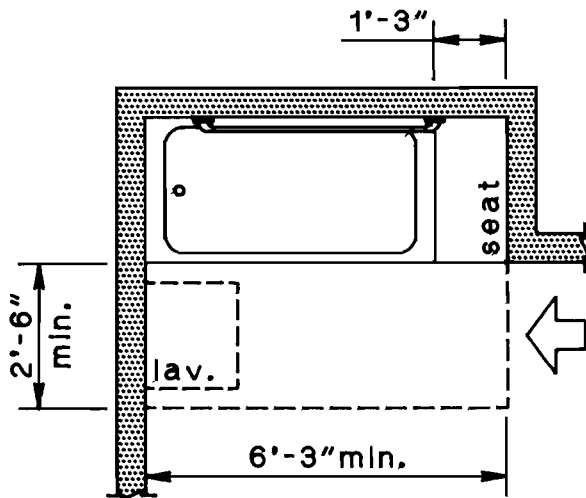


Figure 7.61b.  
Clear floor space with in-tub seat

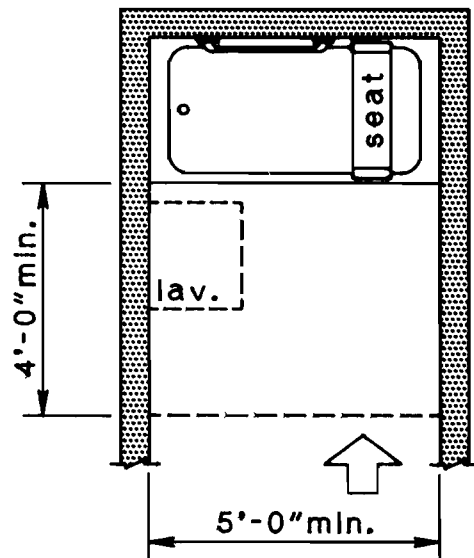


Figure 7.61c.  
Clear floor space with In-tub seat

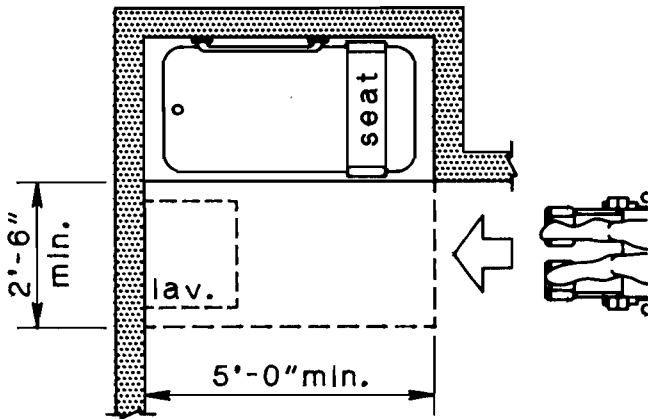


Figure 7.61d.  
Transfer stall

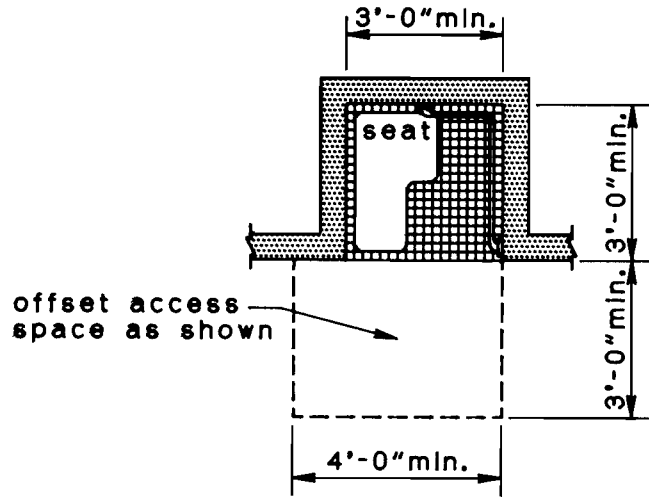


Figure 7.61e.  
Roll-In-stall

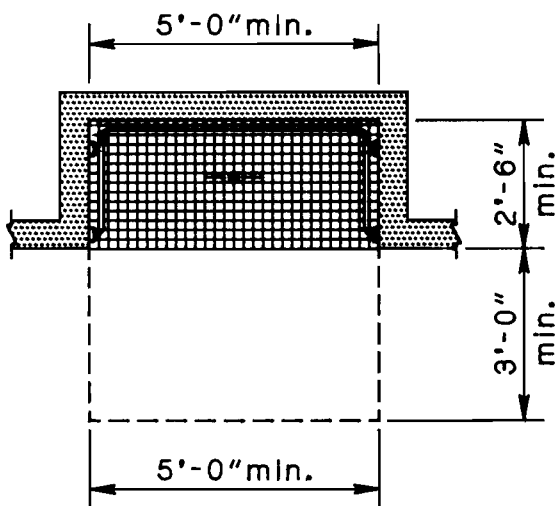


Figure 7.61f.  
Control Wall: Roll-In-shower

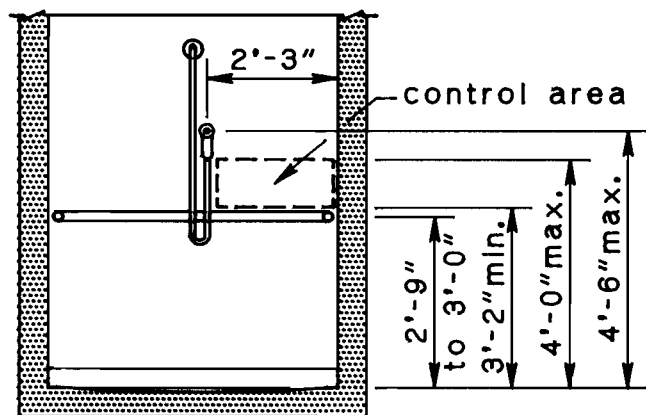


Figure 7.61g.  
Control Wall: Transfer Shower

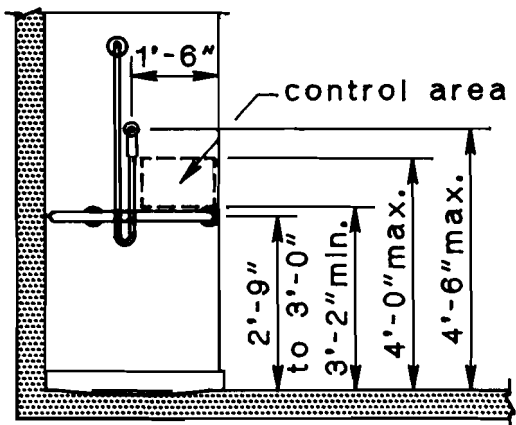


Figure 7.61h.  
Control Wall: Foot area

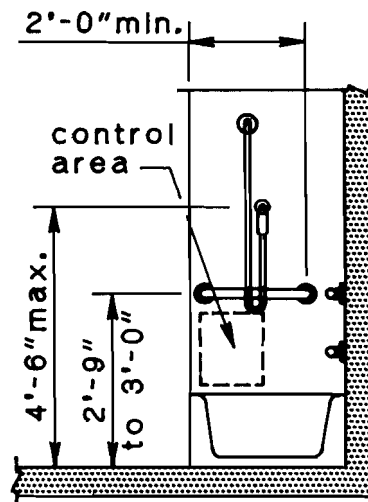


Figure 7.67a.  
Foot

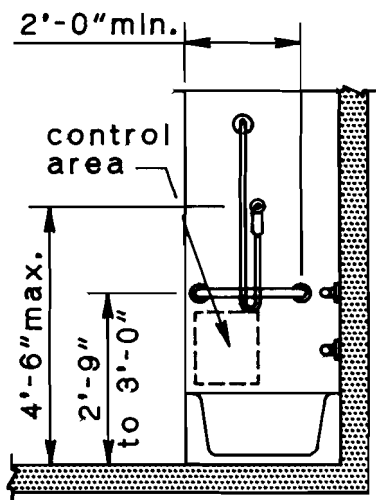


Figure 7.67b.  
Bathtub Back

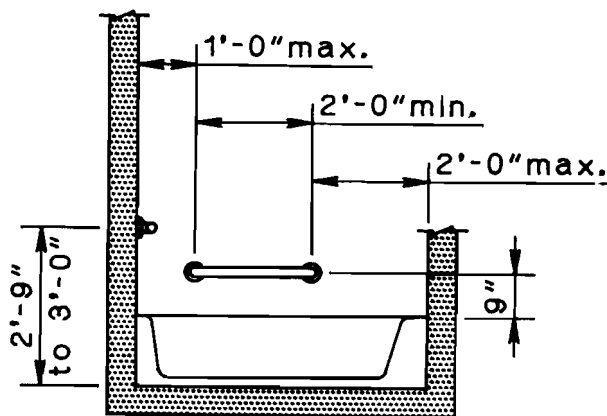


Figure 7.71b.  
Travel Distance

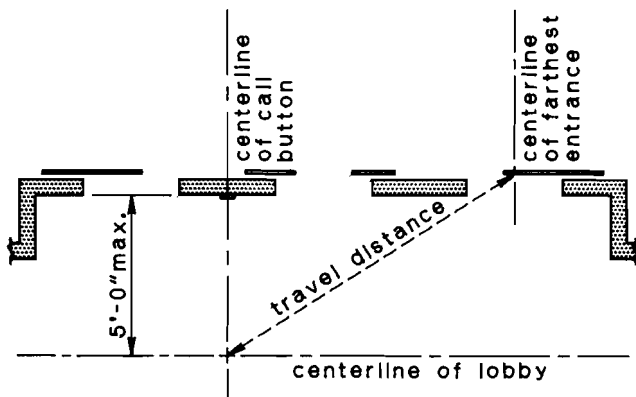


Figure 7.72a.  
Elevator Car: Center Opening

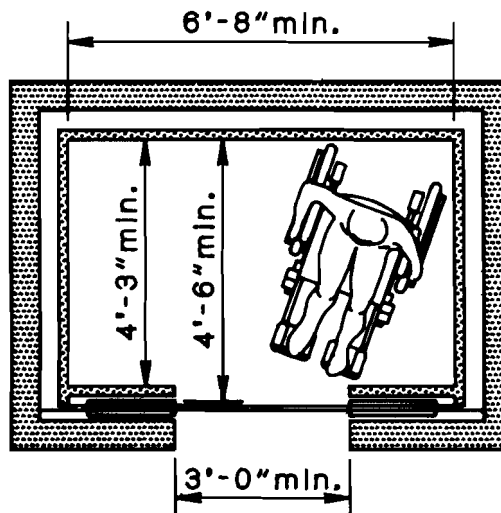


Figure 7.72b.

Elevator Car: Side Opening

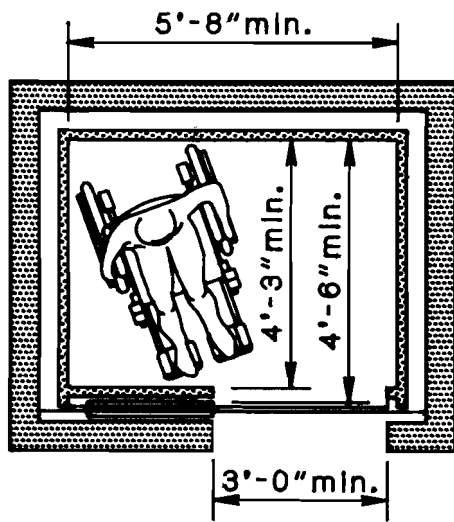


Figure 7.73b.

Elevator Control

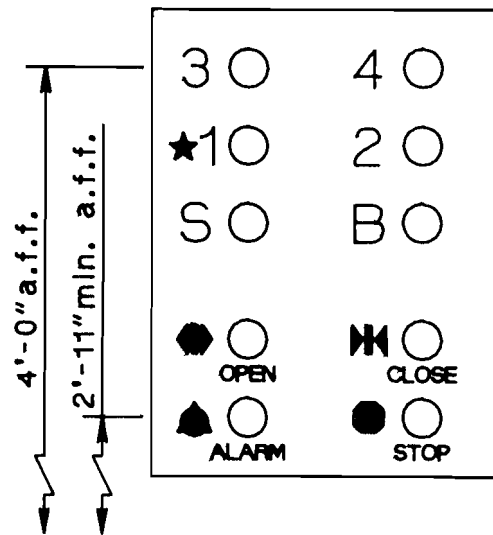


Figure 7.73c.

Control location: Center Opening

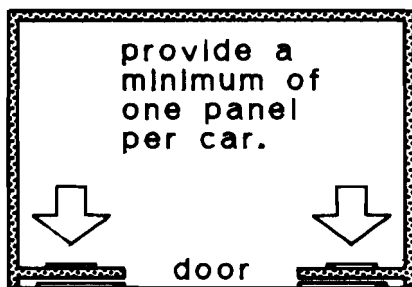


Figure 7.73d.

Control location: Side Opening

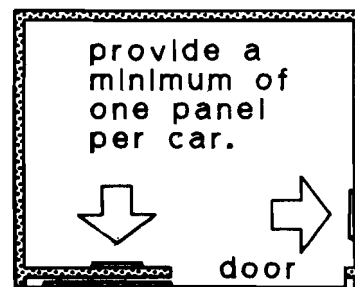


Figure 7.80

Wheelchair Space Provision

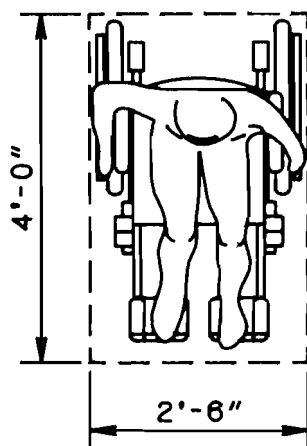


Figure 7.82b.

Cantilevered Drinking Fountain

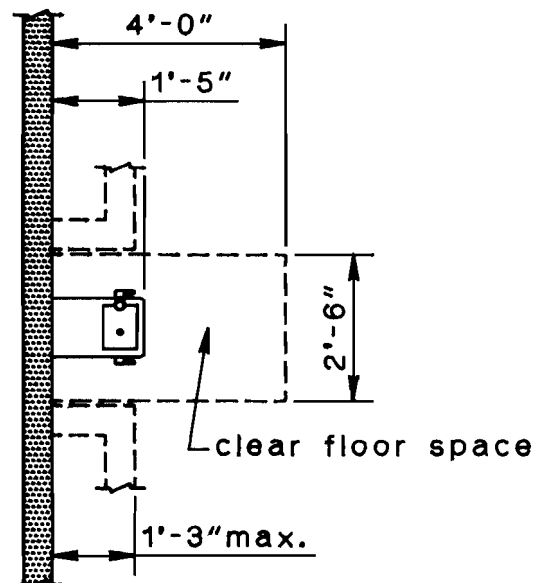


Figure 7.82c.  
(1 & 2)  
Free Standing or Wall-Hung

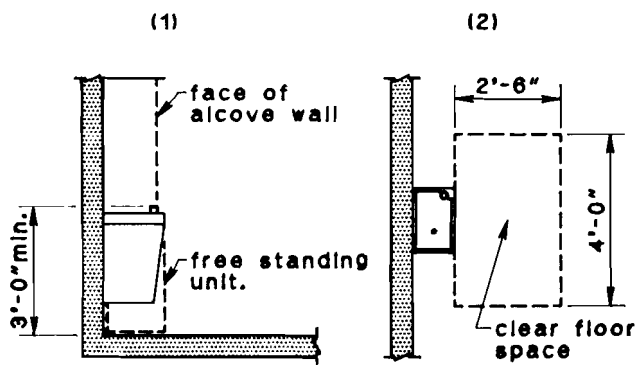


Figure 7.82d.  
Built In Drinking Fountain

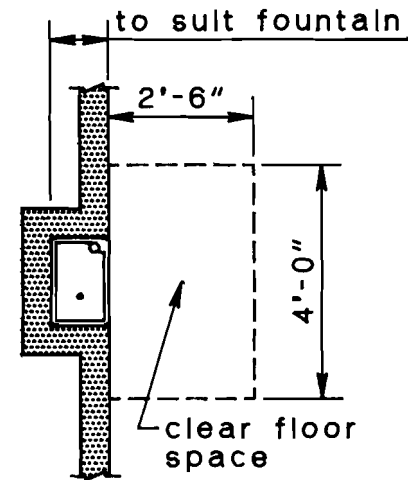


Figure 7.83a  
Telephone: Clear Floor Space

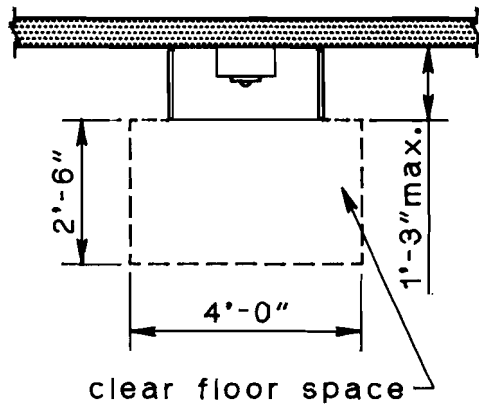


Figure 7.83b  
Telephone: Clear Floor Space

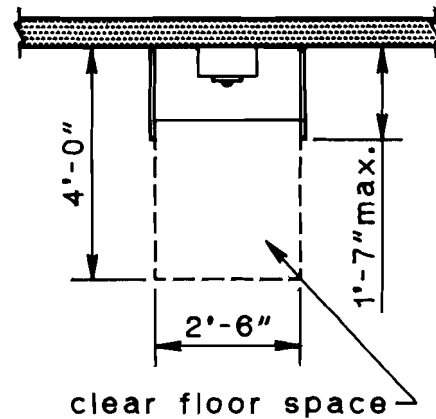


Figure 7.83c  
Telephone: Clear Floor Space

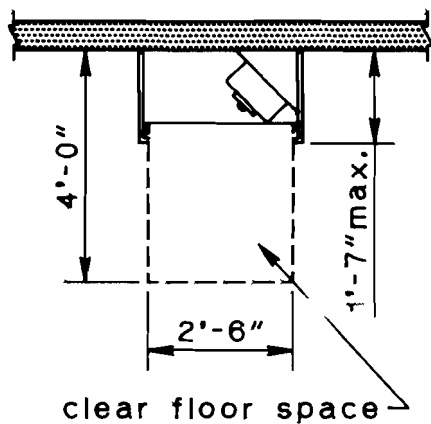


Figure 7.85a  
Accessible Controls & Operating Mechanisms:  
Forward Approach

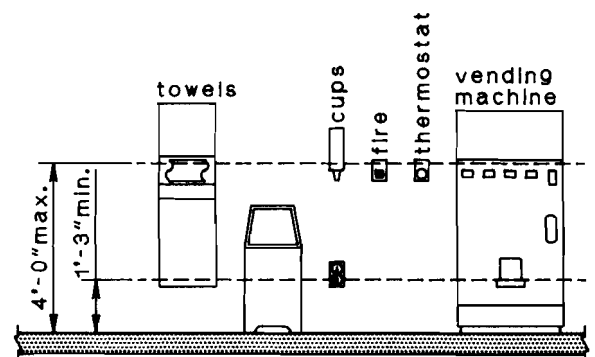


Figure 7.85b  
Accessible Controls & Operating Mechanisms:  
Parallel Approach

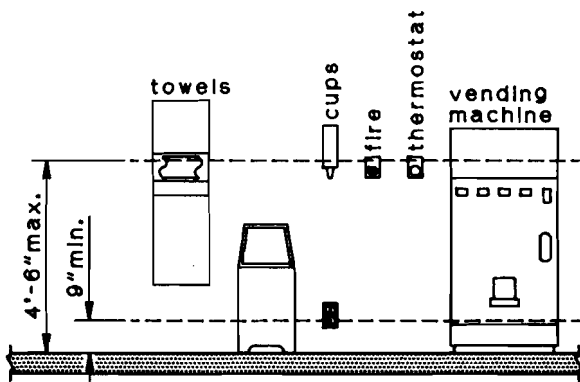


Figure 7.87a  
Viewing Positions

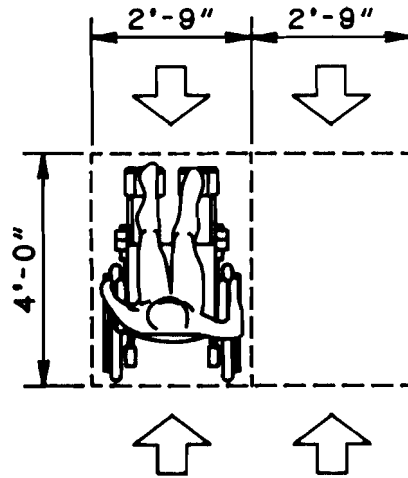


Figure 7.87b  
Viewing Positions

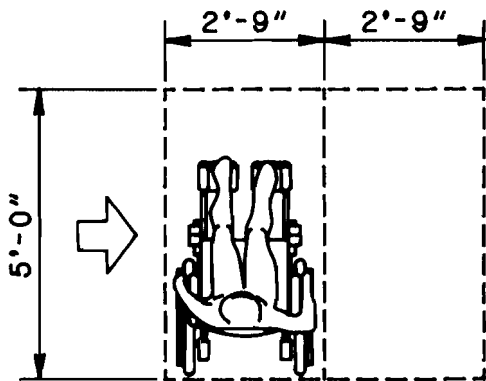


Figure 7.92  
Storage

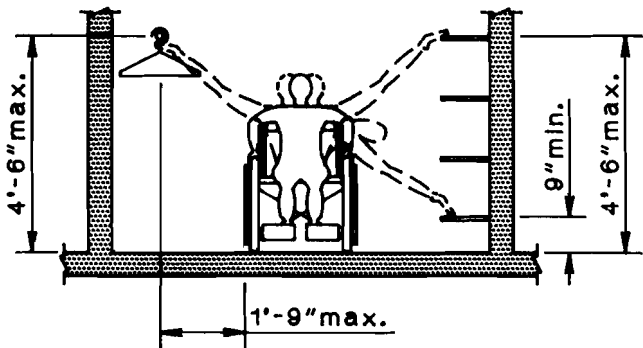


Figure 7.96a.  
Clear Floor Space for Adaptable Bathrooms

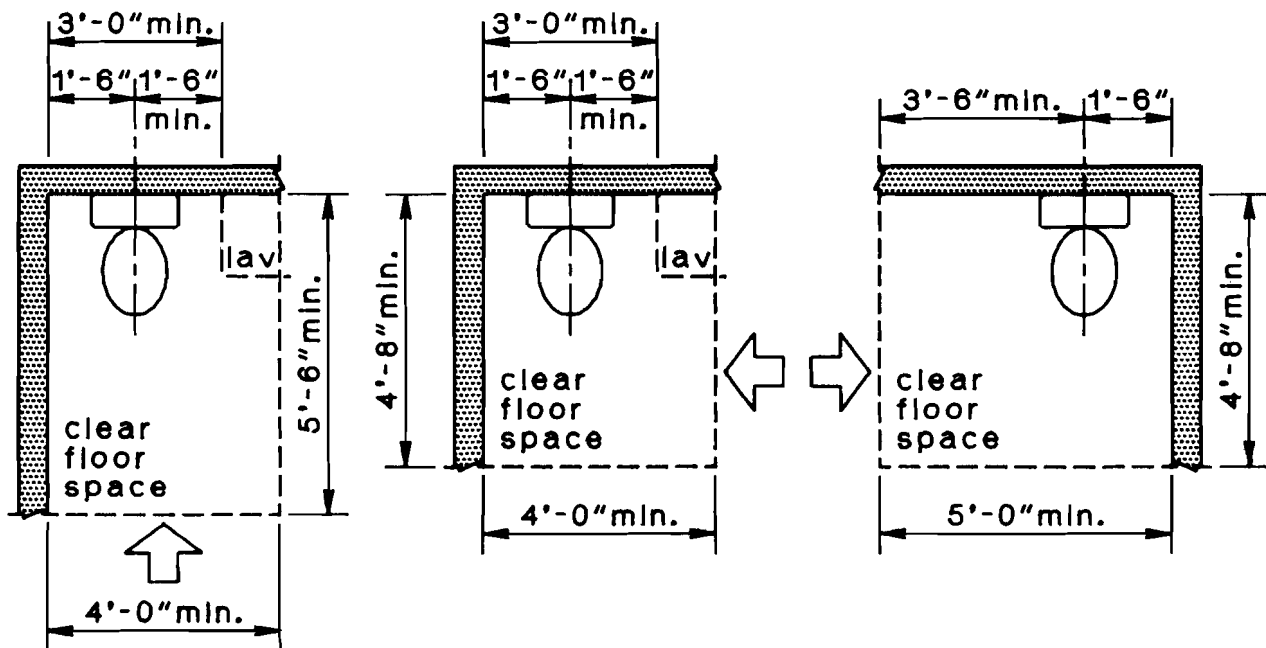
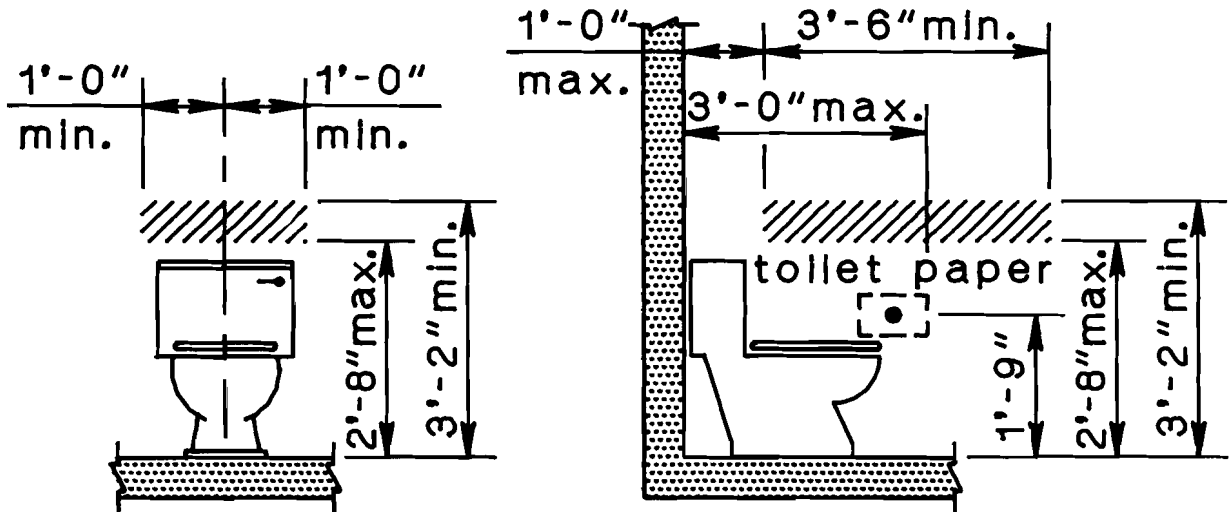


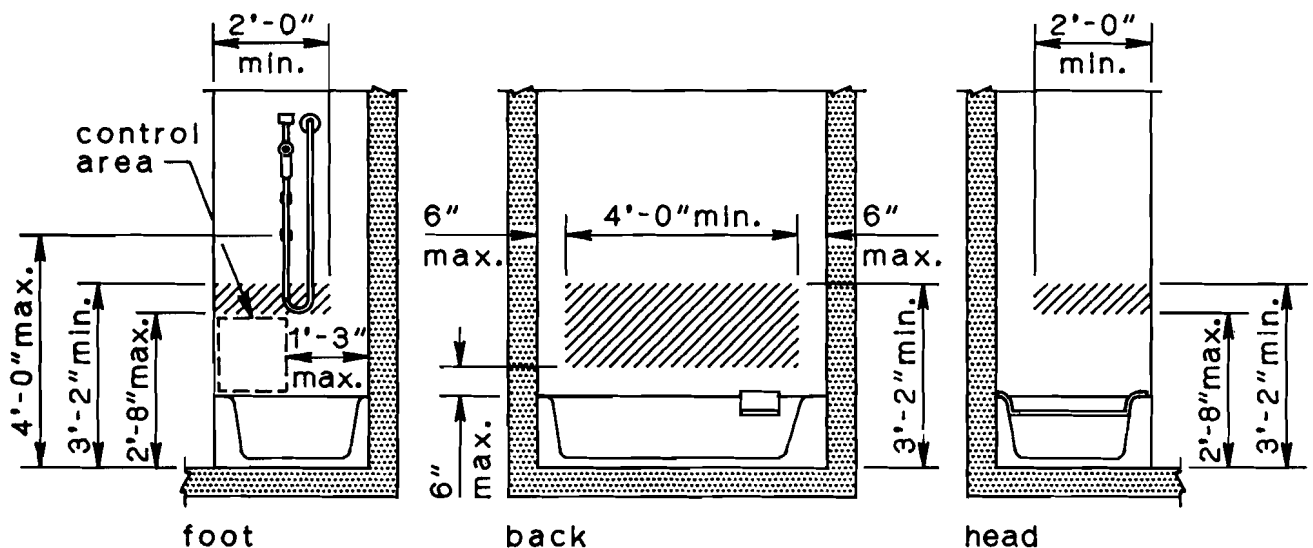
Figure 7.96b.

Water Closets In Adaptable Bathrooms  
 Reinforced Areas for Installation of Grab Bars



Note: The  areas are reinforced to receive grab bars.

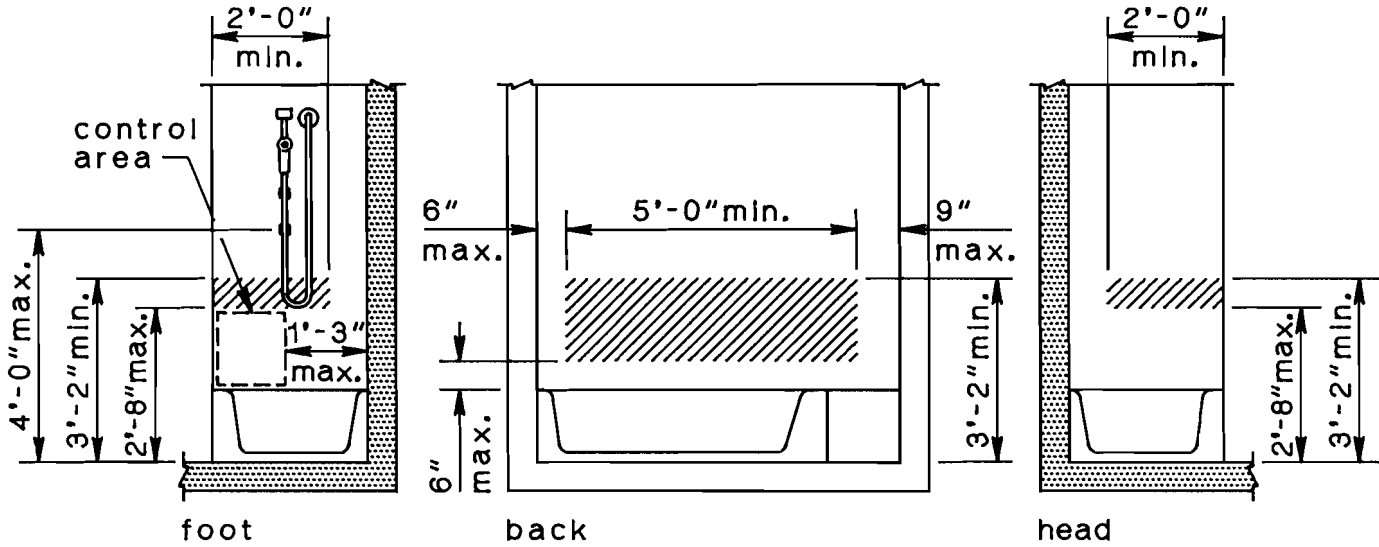
Figure 7.96c.  
 Location of Grab Bars and Controls of Adaptable Bathtubs  
 (With Seat In Tub)



Note: The  areas are reinforced to receive grab bars.

Figure 7.96d.

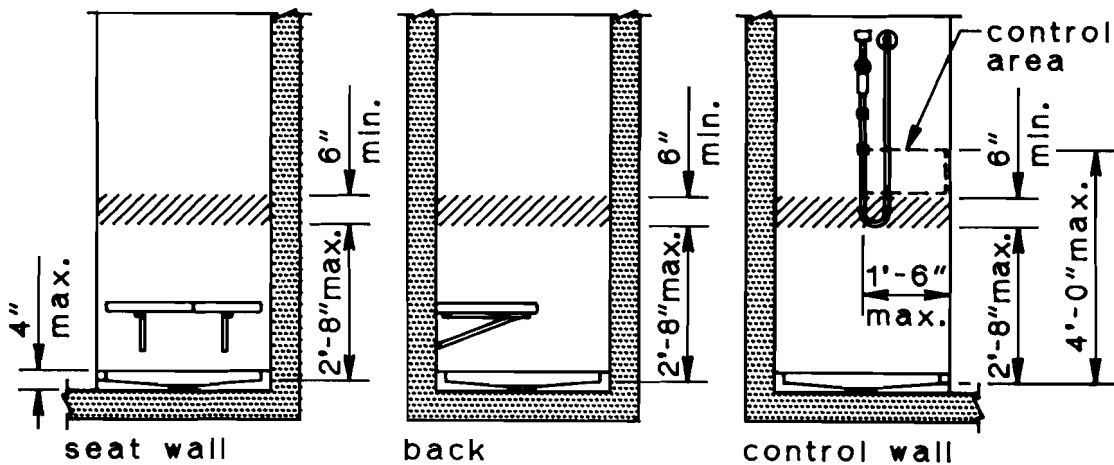
Location of Grab Bars  
and Controls of Adaptable Bathtubs  
(With Seat at Head of Tub)



Note: The // // // // areas are reinforced to receive grab bars.

Figure 7.96e.

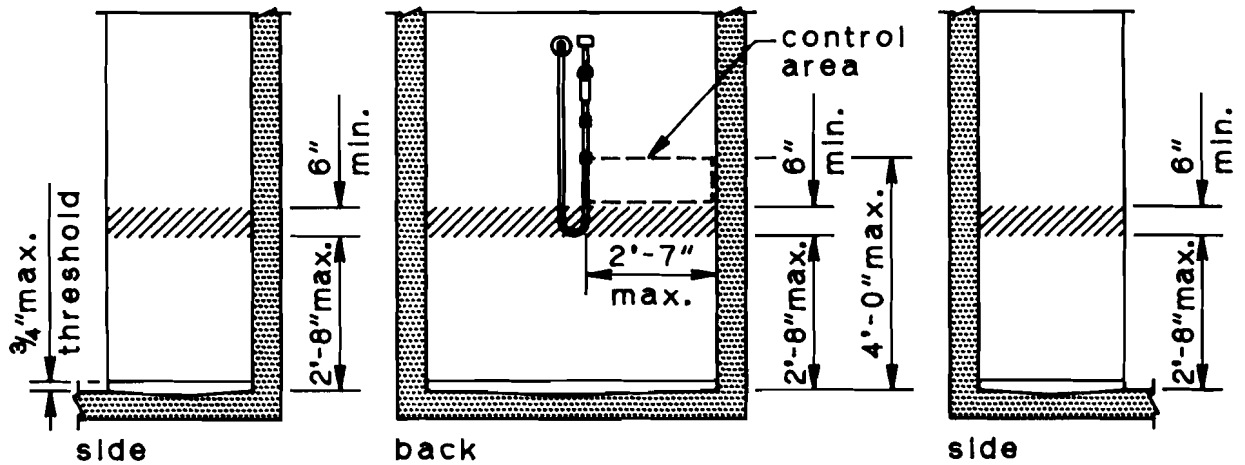
Location of Grab Bars  
and Controls of Adaptable Showers  
3'-0" by 3'-0" Stall



Note: The // // // // areas are reinforced to receive grab bars.

Figure 7.96f.

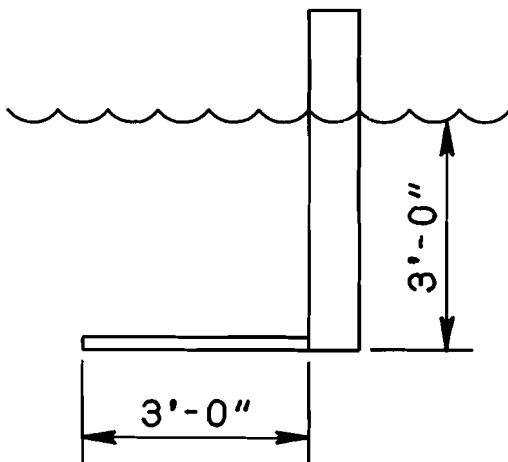
Location of Grab Bars  
and Controls of Adaptable Showers  
2'-6" by 5'-0" Stall



Note: The // // // // areas are reinforced to receive grab bars.

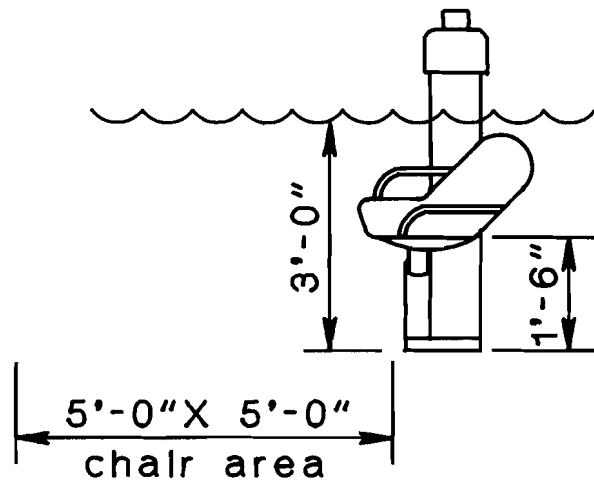
Figure 7.105a  
Pool Entry

Pool Lift  
with Platform



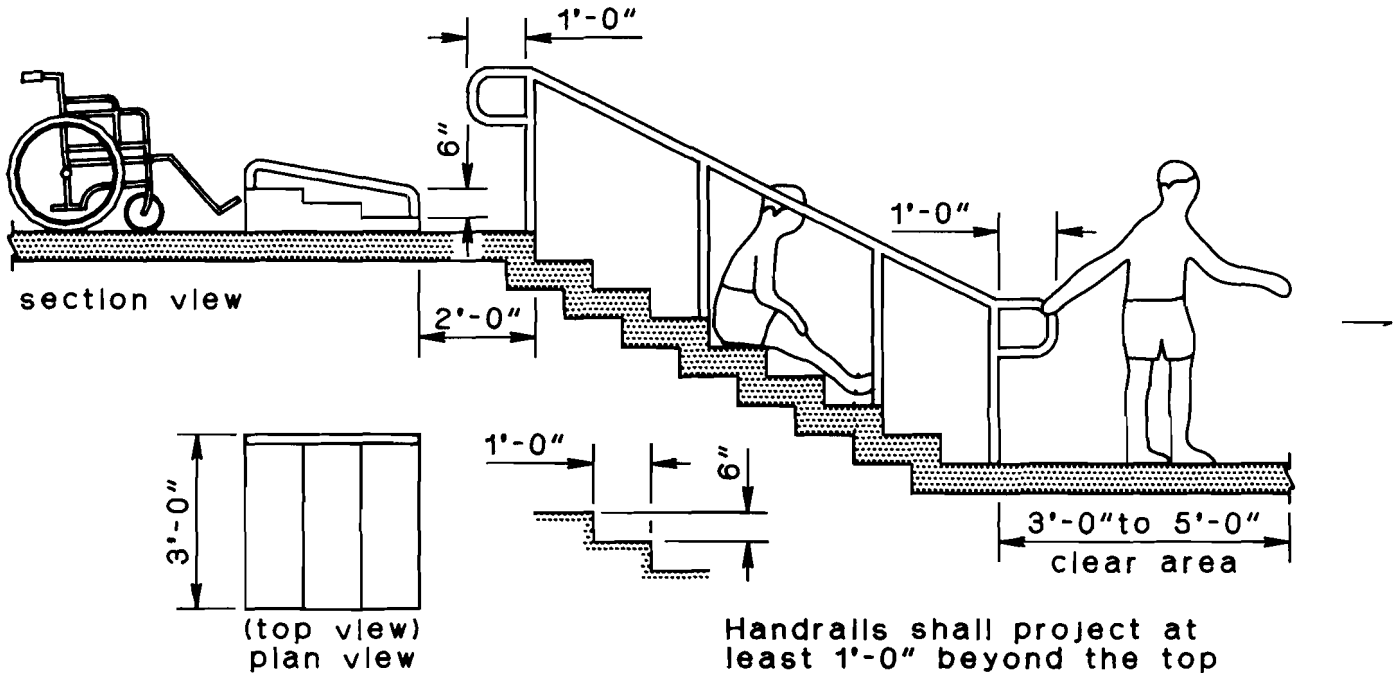
lift shown at full lowered position

Pool Lift  
with Chair



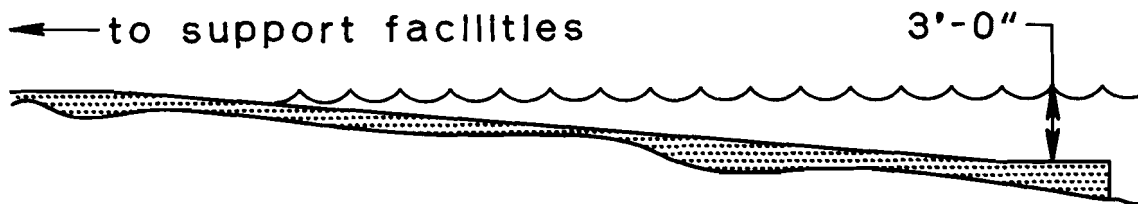
chair shown at full lowered position

Figure 7.105b  
Pool Entry



Handrails shall project at least 1'-0" beyond the top riser and at least 1'-0" plus the depth of one tread beyond the bottom riser.

Figure 7.105c  
Ramp Into Water



Maximum ramp slope 1:12.  
Provide no handrails but provide curbs.  
Maximum ramp run 30'-0", use additional ramp runs with 5'-0" level platforms between, as necessary.  
In pools, assure no access under ramp.

## ENVIRONMENTAL PROTECTION

The following proposals are authorized by Richard T. Dewling, Commissioner, Department of Environmental Protection.

### DIVISION OF WATER RESOURCES

#### (a)

#### Bureau of Shellfish Control Shellfish-Growing Water Classification

#### Proposed Amendments: N.J.A.C. 7:12-1.2, 1.3, 1.4, 1.5, 1.6 and 2.1

#### Proposed New Rules: N.J.A.C. 7:12-1.8 and 2.15

Authority: N.J.S.A. 13:1D-9 and 58:24-1 et seq.

DEP Docket No. 011-86-03.

Proposal Number: PRN 1986-112.

Submit comments by May 21, 1986 to:

William J. Eisele Jr., Chief  
Bureau of Shellfish Control  
Division of Water Resources  
Department of Environmental Protection  
Stoney Hill Rd., Leeds Point  
Star Route  
Absecon, New Jersey 08201

The agency proposal follows:

#### Summary

The Department of Environmental Protection (the department) proposed to amend its rules on the classification of certain shellfish beds as the result of surveys conducted by the Bureau of Shellfish Control.

The surveys consist of the collection and analysis of water samples, the inventory of actual and potential sources of pollution, and hydrographic studies of flow patterns which distribute pollution. These surveys are conducted in accordance with applicable State and Federal (Food and Drug Administration (FDA)) guidelines and regulations as described in the National Shellfish Sanitation Program manual of operations (Part I—Sanitation of Shellfish Growing Areas). The FDA further requires that each state appraise, every two years, the quality of those waters classified as Approved for the harvest of shellfish. New Jersey conducts investigatory work and research and, pursuant to N.J.S.A. 58:24-1 et seq., revises the regulations annually.

The proposed revisions to the regulations are indicated for one or more of the following reasons: (a) changes in water quality; (b) relocation or renumbering of navigation markers; (c) enhanced monitoring of water quality; and (d) clarifying existing regulations.

Changes in water quality were seen as the cause for redefining the classification of the waters along Long Beach Island (Surf City) (180 acres—from Approved to Seasonal), St. Georges Thorofare (107 acres—from Condemned to Seasonal), Townsend and Stites Sound (300 + 142 acres—from Condemned to Approved) and Straight Creek on the Delaware Bay (acreage is too small to determine—from Approved to Condemned).

There are instances where Navigation Markers are utilized to delineate areas. Periodically these aids-to-navigation are moved, requiring administrative changes to the regulations. Buoy relocation or renumbering that requires change in classification of water are Potter Creek to Laurel Harbor (140 acres—from Approved to Seasonal, 33 acres—from Condemned to Approved) and Long Beach Island-Holgate area (160 acres—from Approved to Seasonal).

Increased or enhanced monitoring is the basis for changing the Seasonal Special Restricted classification in Raritan Bay from June through August to May through September yearly. This affects 13,000 acres available for depuration. Additionally, 92 acres in Great Egg Harbor River will be upgraded from Condemned to Seasonal.

The existing regulations list all marinas, boat moorings and anchorages as condemned. For clarification purposes, 92 acres in the Highlands Municipal Marina will be shown as Condemned instead of Special Restricted on the charts.

Poor water quality in the Ocean along the shoreline of Wildwood required closure action during August of 1985. Revision to those delineations are proposed.

These proposed rule amendments will result in the reclassification of

approximately 15,498 acres. The names of the waterways and number of acres reclassified are listed below in general terms.

CHART #	AREA	ACTION	ACRES
1-2	Atlantic Highlands Marina	Special Restricted to Condemned	92
1-2	Raritan Bay	Seasonal Special Restricted (Date change)	13,000
4	Potter Creek to Laurel Harbor	Seasonal to Approved Condemned to Approved	140 33
5	Long Beach Island (Surf City)	Approved to Seasonal	180
6	Long Beach Island (Holgate)	Approved to Seasonal	160
7	Brigantine	Condemned to Seasonal	107
8	Great Egg Harbor River	Condemned to Seasonal	92
8	Townsend Sound	Condemned to Approved	300
8	Stites Sound	Condemned to Approved	142
9	Atlantic Ocean (Wildwoods)	Condemned to Approved Approved to Condemned	62 1190
10	Delaware Bay (Straight Creek)	Approved to Condemned	too small to determine

This proposal also provides rules for the proposed hard clam spawner sanctuary program, currently under development by the department, and the proposed formalization of the scientific and non-human consumption collection program. Finally, modifications and new additions are being proposed for the definition section at 7:12-1.2 to clarify the department's Special Permit Program in addition to the terms associated with the hard clam spawner sanctuary program.

#### Social Impact

In addition to the more than 23,000 persons licensed to harvest shellfish, the adoption of this proposal benefits the far greater number of consumers who utilize the shellfish harvested from New Jersey waters. At the same time, the downgrading of some waters may in limited cases reduce recreational opportunities. The continued monitoring efforts undertaken by the department insure that the State's shellfish resource remains a wholesome food product, available to both recreational and commercial harvesters.

#### Economic Impact

These shellfish growing water reclassifications represent a net increase in the availability of harvest water to shellfishermen. The overall economic impact of these regulatory changes should be positive for the shellfish industry while allowing the department to fulfill its statutory responsibility to protect the public health with minimal administrative cost to the State.

#### Environmental Impact

The continuous monitoring of New Jersey's shellfish growing waters benefits the State not only by affording protection from shellfish related disease, but also by serving as an environmental yardstick by which the progress of pollution abatement programs can be measured.

In addition, the demand for increased recreational, residential and commercial facilities in New Jersey's coastal zone continues to present a dilemma to environmental planners. The level of discord associated with the conflicting interests that depend upon publicly owned and managed natural resources can only be expected to increase. Therefore the need for an objective method of evaluating the impact of man's activities upon complex estuarine and marine systems is increasing. The criteria associated with the National Shellfish Sanitation Program, which forms the basis of these water quality classifications, is but one suggested method that can be utilized to quantify the impact of development on the environment.

This proposal represents a tangible measurement of the quality of New Jersey's coastal surface waters as well as providing a historical record for future comparison. The adoption of this proposal will exert a positive environmental impact primarily by sanctioning the extensive monitoring efforts that preceded the specific changes recommended herein.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]).

#### 7:12-1.2 Definitions

The following words and terms, when used in this subchapter, shall

have the following meanings unless the context clearly indicates otherwise:

...  
**"Department"** means the New Jersey Department of Environmental Protection.  
 ...

**"Sanctuary"** means an area established by the department for research purposes.

**"Seasonal area"** means waters condemned and opened for the harvest of shellfish each year automatically by operation of the regulations in this chapter. [according to schedule of N.J.A.C. 7:12-1.3(b) and (c) 1.4 and 1.5.]

...  
**"Spawner area"** means those areas established by the department to re-establish shellfish populations.

**"Special Permit Programs"** means programs developed to utilize shellfish from waters classified other than Approved.  
 ...

#### 7:12-1.3 Growing water condemnations

(a) Charts designating growing water classifications as hereinafter described are available from the Bureau of Shellfish Control Offices, Marine Police Stations, and Shellfisheries Field Offices at Bivalve and Nacote Creek. However, all persons are cautioned that emergency closures may be necessary and may not be charted. These Shellfish Growing Water Classification Charts are developed from Nautical Charts Number 12327 New York Harbor, [79th Edition, July 2, 1983]80th Edition, December 29, 1984; Number 12324 Intracoastal Waterway, Sandy Hook to Little Egg Harbor, [21st Edition, March 5, 1983]23rd Edition, June 1, 1985; Number 12316 Intracoastal Waterway, Little Egg Harbor to Cape May, [20th Edition, November 27, 1982]22nd Edition, May 4, 1985; and Number 12304 Delaware Bay, [28th Edition, April 17, 1982]30th Edition, March 16, 1985. The State Department of Environmental Protection hereby condemns all shellfish growing waters or other places from which shellfish are or may be taken at all times of the year, except when otherwise noted in N.J.A.C. 7:12-1.4, 1.5, [and] 1.6, and 1.8.

1.-2. (No change.)

3. Raritan Bay area (A portion is designated as a Special Restricted area and a portion is designated as a Seasonal Special Restricted area. See: N.J.A.C. 7:12-1.6):

i.-ii. (No change.)

iii. All the waters of Sandy Hook Bay and tributaries thereof: (Portions are designated as Special Restricted Areas or Seasonal Special Restricted Areas. See: N.J.A.C. 7:12-1.6.) [Special Restricted Area: That portion of Sandy Hook Bay bounded by a line beginning at the south end of that pier maintained by the United States Navy in Leonardo (United States Navy Ammunition Depot-Earle) where it intersects the shoreline and following the easternmost side of the mainstem of that pier to its northernmost extent, then following a line connecting that point to Sandy Hook light, Fixed light 88ft 19M (F 88ft 19M) bearing approximately 082 degrees T to where it intersects the western shoreline of Sandy Hook peninsula, then southward following the west shore of Sandy Hook to the Route 36 highway bridge over the Shrewsbury River, then proceeding westward along that bridge to where it adjoins the mainland, then following the shoreline in a general northwesterly direction to its point of origin at the base of the naval pier. (This designation of Special Restricted waters directly adjoins those waters defined as Seasonal Special Restricted Areas in N.J.A.C. 7:12-1.6.)]

iv. The Special Restricted area is that portion of Sandy Hook Bay bounded by a line beginning at the south end of that pier maintained by the United States Navy in Leonardo (United States Navy Ammunition Depot-Earle) where it intersects the shoreline and following the shoreline in a generally southeasterly direction until it reaches the structure forming the western extent of the Atlantic Highlands Municipal Harbor, and then following the western edge of this structure in a northerly direction to its northernmost extent, and then connecting this structure with the breakwater (this breakwater or stonepile forms the northern boundary of the municipal harbor) and following the northern side of the breakwater in an easterly direction to its easternmost extent, where it is marked by the navigational marker designated as Flashing light 4 second 29ft 8M (F1 4sec 29ft 8M) and then bearing approximately 201 degrees T to the mainland, and then following the shoreline in a generally southeasterly direction to the westernmost extent of the Route 36 highway bridge, spanning the Shrewsbury River and then following the northern edge of that bridge to where it intersects the shoreline on Sandy Hook, and then following the shoreline in a generally northerly direction until it intersects a line connecting Sandy Hook light, Fixed light 88ft 19M (F 88ft 19M) to the northernmost extent

of the Earle Pier, and following that line bearing approximately 262 degrees T to the northernmost extent of the naval pier, and then following the westernmost side of the pier in a generally southwestern direction to its point of origin where the pier intersects with the shoreline. (This designation of Special Restricted area directly adjoins those waters defined as Seasonal Special Restricted areas in N.J.A.C. 7:12-1.6.)

4.-10. (No change.)

11. Barnegat Bay-Brick Township area and Dover Township form the Metedeconk River to Toms River (A portion is designated seasonal. See: N.J.A.C. 7:12-1.5):

i.-v. (No change.)

vi. All those waters of Shelter Cove west from a straight line connecting the points of land at its mouth, then all those waters west and north of a line from the southernmost point of land at the mouth of Shelter Cove and bearing approximately 154 degrees T to [light 40 (F1 G 8 feet)] Flashing Red light "40" (F1 R "40"), then bearing approximately 181 degrees T toward Good Luck Point and terminating at its point of intersection with the Mathis Bridge, connecting the mainland with Pelican Island; the southern boundary of this condemned area shall follow said bridge in a westward direction and terminate at its connection with the mainland shore. The bridge is a common boundary line with paragraph 12 of this subsection.

12. (No change.)

13. Barnegat Bay-Berkeley Township area, Toms River to Potter Creek:

i. All the waters west of a line beginning on the north bank of the entrance to Good Luck Point Marina (at Good Luck Pt.) along the offshore ends of the piers in a southerly direction to the eastern end of Barnegat Pier, then bearing approximately [225]215 degrees T to [flashing light 60 (F1 R 8 ft.)]Flashing Red light 4s "60" (F1 R 4s "60") north of Berkeley Shores, then bearing approximately [218]221 degrees T to and terminating at the most easterly point of land on the south bank of Potter Creek;

ii. (No change.)

14. Barnegat Bay-Berkeley Township, Potter Creek to [Forked River] Sunrise Beach (A portion is designated as Seasonal. See: N.J.A.C. 7:12-1.4.):

[i. Potter Creek to Laurel Harbor area: All those waters west of a line beginning at the most easterly point of land in the south bank of Potter Creek as described in section 13i above and bearing approximately 186 degrees T to an unnamed point of land at the mouth of a cove on the north side of Cedar Creek, then bearing approximately 114 degrees T across the mouth of that cove to the next point of land and following the shoreline of this land formation to its southeasternmost point, then bearing approximately 164 degrees T to the northernmost point of the small unnamed island off of Laurel Harbor, then bearing approximately 136 degrees T to Flashing light 64 (F1 R 8ft "64") then bearing approximately 220 degrees T touching the southeast shore of Laurel Harbor to a juncture with a line connecting Special Purpose Buoy "A" (bearing approximately 296 degrees T), and the marker on the mainland, then along this line to the marker described above;]

i. Potter Creek to Cedar Creek area: All those waters west of a line beginning at the most easternmost point of land (directly east of the terminus of Island Drive, Berkeley Township) on the south bank of Potter Creek (this point of land coincides with that described in subsection 13i above) and bearing approximately 182 degrees T to the northernmost point on the pier located on the northernmost point of land at Berkeley Island Park (Ocean County Park System);

[ii. All of Cedar Creek and tributaries:]

ii. Cedar Creek to Laurel Harbor area: All those waters west of a line beginning at the bulkhead (located on the northeasternmost point of land at the mouth of Cedar Creek) located on the southeasternmost extent of Berkeley Island Park (Ocean County Park System) and bearing approximately 161 degrees T to the northernmost point of land on the unnamed island located just east of Laurel Harbor, and then following the eastern shoreline of this island in a southerly direction to the southernmost extent of this island, and then bearing approximately 207 degrees T to the Department Maintained marker located on the northernmost point of land on the mainland, (located at the northeastern extent of Laurel Boulevard in Lacy Township) and then following the shoreline in a southerly direction, and then westerly to the southernmost extent of land in Laurel Harbor (located at the southwesternmost extent of Laurel Boulevard in Lacy Township) and then bearing approximately 229 degrees T to the unnamed point of land that forms the southeastern bank at the mouth of the Laurel Harbor lagoon complex where it terminates. (This Condemnation includes all waters of

Cedar Creek and its tributaries as well as all waters comprising the Laurel Habor lagoon complex.;

iii. (No change.)

15. (No change.)

16. Barnegat Bay-Little Egg Harbor-Long Beach Island area; Barnegat Light to Holgate (A portion is designated as Seasonal. See: N.J.A.C. 7:12-1.4 and 1.5):

i.-ii. (No change.)

iii. All those waters of the tributaries or creeks of Cedar Bonnet Island north of Route 72 (Manahawkin Causeway) enclosed by a line beginning on the easternmost bank at the mouth of the easternmost creek or tributary and then bearing approximately 270 degrees T to the western bank at the mouth of this tributary, and then following the shoreline easterly to the next tributary, creek, or lagoon's mouth, where it bears approximately 270 degrees T to the western bank of this body of water where it terminates.

17.-24. (No change.)

25. Brigantine area (A portion is designated as Seasonal. See: N.J.A.C. 7:12-1.5):

i. (No change.)

ii. All of Black Hole and St. Georges Thorofare[;] north and east of a line from the point of land on the western shore, at the mouth of Sea King Lagoon and bearing approximately 348 degrees T to the opposite shore.

iii. (No change.)

26.-28. (No change.)

29. Great Egg Harbor River (A portion is designated as Seasonal. See: N.J.A.C. 7:12-1.5):

i. All of the Great Egg Harbor River and tributaries upstream from a line beginning at [Flashing light number 7 (F1 "7") and bearing approximately 020 degrees T to the west bank at the mouth of Lakes Creek] **Flashing Red 8 (F1 R "8") and bearing approximately 208 degrees T to a department maintained marker at the mouth of an unnamed creek.** This line coincides with the line described in N.J.A.C. 7:12-1.5):

ii.-iv. (No change.)

30. (No change.)

31. Strathmere and Sea Isle City area (A portion is designated as Seasonal. See: N.J.A.C. 7:12-1.4):

i.-vi. (No change.)

vii. [All of Sunks Creek, Mill Creek, Ware Thorofare, Clem Thorofare, Mill Thorofare, Townsend Sound and portions of Townsend Channel and tributaries thereof northwest of a line from a Department maintained marker at the tip of an unnamed peninsula (approximately 1000 yards north of N "140" buoy) and bearing approximately 212 degrees T to a Department-maintained marker on the adjacent shoreline;] **All of Sunks Creek, Mill Creek, Ware Thorofare, Mill Thorofare and tributaries thereof, and portions of Townsend Sound north of a line from a department maintained marker on the prominent point of land along the western shoreline of Townsend Sound and bearing approximately 105 degrees T to another department maintained marker at the mouth of an unnamed tributary on the opposite shoreline;**

viii. The area of Townsend Channel adjacent to the town of Townsends Inlet contained within a line beginning at the [tank on Townsends Inlet, then running to buoy R "142", then running to buoy R "144"] **street end at 77th St. and running to a Department maintained marker at the mouth of Middle Thorofare, then to the southernmost pier in Townsends Channel (at the end of 94th Street) then running along that pier to the shore and terminating.**

32. Avalon area:

i.-vi. (No change.)

vii. [All of South Channel and Stites Sound contained within a line from the Department-maintained marker at the easternmost tip of the unnamed island at the confluence of South Channel and North Channel and bearing approximately 152 degrees T to another Department-maintained marker, then along the shoreline of South Channel in a westerly direction, across the mouth of Leonard Thorofare, then in a northerly direction along the shoreline of Stites Sound to a Department-maintained marker at the mouth of the second unnamed creek and bearing approximately 063 degrees T to a Department-maintained marker at the mouth of Middle Thorofare and along the shoreline in a southeasterly direction across the mouth of North Channel and along the western shorelines of a series of four unnamed, adjacent islands to the point of origin and terminating.] **All of South Channel from a straight line beginning at the easternmost tip of the unnamed island at the confluence of South Channel and North Channel and bearing approximately 115 degrees T to the opposite shore of South Channel to a line that begins at the northernmost point of the unnamed island on the north side of the western entrance to South**

**Channel and bearing approximately 246 degrees T and terminating on the western bank of the entrance to Leonard Thorofare.**

viii. (No change.)

33.-34. (No change.)

35. The Wildwoods area (A portion is designated as a special restricted area):

i.-xv. (No change.)

xvi. Special restricted area:

(1) (No change.)

(2) All of Jarvis Sound south and west of a line [through channel marker 43 (F1 G 8ft "43") bearing approximately 014 degrees T] **connecting two unnamed tributaries (and passing through buoy 45 at the northern end of Jarvis Sound then along the shoreline in a westerly direction to the junction with Reubens Thorofare and Upper Thorofare, then across Upper Thorofare bearing approximately 311 degrees T then along the southern shoreline of Jarvis Sound across the mouth of Middle Thorofare and Lower Thorofare, then along the shoreline in a northerly direction across the mouth of Shell Thorofare and terminating at the point of origin.**

36. Cape May (A portion is designated as a special restricted area):

i.-vi. (No change.)

vii. Special Restricted area: All of Cape May Inlet and Cape May Harbor inside a line beginning at Flashing light 7M (F1 4 sec. 30 ft. 7M) at the outermost end of east jetty at Cape May Inlet, along the jetty and shoreline until it intersects a line connecting the 641 ft. Lorán tower on the north side of the inlet and [the 22 foot range light (QR F1 2 sec. 22 ft.)] **range light QK 36 2sec.** marking the entrance channel through Cape May Inlet, then along the shoreline in a westerly direction and across Skunk Sound to a line connecting flashing red light (F1 R 4 sec.) marking the entrance to Cape May Canal and the radio tower at the U.S.C.G. Receiving Station, along that line to the shoreline, along the shoreline to a line beginning at the tank on the U.S.C.G. Training Center and bearing approximately 331 degrees T to buoy C "11" then along a line connecting buoy "C" with flashing green light 5(F1 G 2-1/2 sec. "5") then to the shore bearing approximately 157 degrees T, then along the shoreline to the light (F1 G 4 sec. 37 ft. 7M) end of the jetty then across the inlet to the Flashing light 7M fl 4 sec. 30 ft. 7M and terminating.

viii. (No change.)

37. Delaware Bay area (A portion is designated as Seasonal. See: N.J.A.C. 7:12-1.4):

i. All that portion of Delaware Bay contained within a line beginning at the pumping station at the mouth of Fishing Creek, Cape May County, bearing approximately 296 degrees T and extending into the bay for one nautical mile, then bearing approximately 199 degrees T to Flashing light number [3(F1 2-1/2 sec. "3")] **4(R"4" F1 R 2.5 sec)** at Crowshoal, then continuing to Cape May Lighthouse and terminating. The closure includes all tributaries flowing into the above described area, including Fishing Creek, Cox Hall Creek and Pond Creek. This condemnation adjoins the closure defined in paragraph 39vi of this subsection;

ii.-ix. (No change.)

x. **Straight Creek: All of Straight Creek;**

[x.]xi. (No change in text.)

[xi.]xii. Cohansey Cove-Cohansey River Area: All of Delaware Bay, Cohansey Cove, Cohansey River, and tributaries inshore and upstream of a line from F1 2.5 sec. [4 M "3" and bearing 99 degrees T to a Department-maintained marker on the mainland and terminating] **5 M "3" and bearing approximately 245 degrees T to buoy N "10", then bearing approximately 99 degrees T to a Department maintained marker on the mainland and terminating.**

[xii.]xiii. (No change in text.)

[xiii.]xiv. All of that portion of Delaware Bay and tributaries thereof, inshore of a line from a Department-maintained marker at Beadon Point and bearing approximately 309 degrees T towards flashing light (F1 4 sec. [16 ft] **33 ft 6M**), but terminating at a Department-maintained marker on the shoreline at Nantuxent Pt.

38. (No change.)

39. Atlantic Ocean

i.-iv. (No change.)

v. All of the ocean waters inshore of a line beginning at the American Legion Building (the old Coast Guard Station) located at the corner of Second Avenue and 117th Street, Borough of Stone Harbor, with coordinates of latitude 39 degrees 02.4 minutes N., longitude of 74 degrees 46.2 minutes W., and bearing approximately 180 degrees T for approximately 3.4 nautical miles to a point with coordinates of latitude 38 degrees 59.0 minutes N., longitude 74 degrees 46.2 minutes W. (generally marked by a buoy charted as R "8" F1 R 4 sec. BELL at the entrance to Hereford

Inlet), then bearing approximately [237] **246 degrees T** [towards light Fl 4 sec. 30 ft. 7M at the end of the east jetty at Cape May Inlet for approximately one nautical mile to a point with coordinates of latitude 38 degrees 58.5 minutes N., longitude 74 degrees 47.3 minutes W., then bearing approximately 312 degrees T to the standpipe located on the corner of New Jersey Avenue and Maple Avenue, City of Wildwood] **for approximately 4.9 nautical miles to the 641 ft Fl R Lt LORAN TOWER located on the United States Coast Guard Electronic Engineering Center, Lower Township,** with coordinates of latitude 38 degrees [59.5] **57.0 minutes N.,** and longitude of 74 degrees [48.8] **52.0 minutes W.,** and terminating. This condemnation adjoins the closure defined in paragraph 35i of this subsection;

vi. All those waters inshore of a line beginning at the water tank located on the United States Coast Guard Training Center, City of Cape May, with coordinates of latitude 38 degrees 56.8 minutes N., and longitude 74 degrees 53.6 minutes W., and bearing approximately 151 degrees T to the New Jersey three nautical miles jurisdictional limit, then proceeding in a westerly direction three nautical miles offshore for approximately [8.2] **8.5 nautical miles** to a point with coordinates of latitude 38 degrees [53.7] **54.3 minutes N.,** longitude 75 degrees [01.6] **01.7 minutes W.** (generally marked by a buoy charted as R"2" Fl R 4s) then bearing approximately [026] **033 degrees T** for approximately [2.2] **2 nautical miles** to a point with coordinates of latitude 38 degrees [55.7] **56.0 minutes N.,** longitude 75 degrees [00.4] **00.3 minutes W.** (generally marked by a buoy charted as [Fl 2 1/2 sec. "3"] "4" Fl R 2.5sec. marking the southwest side of Crow Shoal), then along the line described in paragraph 37i of this subsection to Cape May Lighthouse (Fl [15 sec.] **15sec. 165 ft. [19 M] 24M**) and terminating. This condemnation adjoins the closure defined in paragraph 37i of this subchapter.

vii. (No change.)

7:12-1.4 Seasonally Approved Growing Waters (Approved November 1 through April 30, Condemned May 1 through October 31, yearly)

(a) (No change.)

i. Southern Barnegat Bay area:

i. Potter Creek to [Forked River] **Laurel Harbor:** Seasonal—Condemned May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All those waters east of the line described in N.J.A.C. 7:12-1.3(a) 14i and 14ii and west of a line beginning at the easternmost point of land on the southern bank of Potter Creek and bearing approximately [156] **161 degrees T** to [Nun buoy 62N ("62"), then bearing approximately 168 degrees T to Can buoy 63 (C "63"), then bearing 193 degrees T to Flashing Red light 64 (Fl R "64"), then bearing approximately 197 degrees T to Special Purpose buoy "A" off Laurel Harbor, then bearing approximately 296 degrees T to the juncture with the Condemned area line described in N.J.A.C. 7:12-1.3(a)14i;] **Intracoastal Waterway channel marker Red Nun 62 (N "62") and then bearing approximately 181 degrees T to Flashing Red light 15ft "64" PA (Fl R 15ft "64" PA) and then bearing approximately 252 degrees T to the department maintained marker located on the northeasternmost point of land on the mainland, (located just northeast of the northeastern extent of Laurel Boulevard in Lacy Township) where it terminates; (This designation of Seasonally Approved waters directly adjoins those defined as Condemned in N.J.A.C. 7:12-1.3(a)14ii.)**

ii. (No change.)

2. Barnegat Bay-[to Little Egg Harbor Bay-Long Beach Island area: [Barnegat Light to Holgate:]

i. **Northern Long Beach Island:** Seasonal—Condemned May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All that portion of Barnegat Bay and Manahawkin Bay lying east [and south from] of a line beginning on the northern point of land forming the mouth of the most northerly lagoon [complex] located between **Butler and Meadow Streets** in High Bar Harbor (**Long Beach Township**) and bearing approximately 270 degrees T to the northeast point of the northernmost of the two islands just offshore, (**Edwin B. Forsythe National Wildlife Refuge—Barnegat Division**) then along the east shore of that island to its southeast point, then bearing approximately 131 degrees T across the unnamed gut or thorofare to the northeast point of the southernmost island, then along the east shore of that island to its [southeast] **easternmost** point, then bearing approximately [142] **144 degrees T** to the most easterly [tip of] **point on Vol Sedge**, then along the **southeastern** shore of that island to its southernmost point, and then bearing approximately 170 degrees T to the easternmost extent of the southern **island of Vol Sedge**, [and across the easternmost tip of the other island of Vol Sedge,] then bearing approximately 213 degrees T to the westernmost tip of Loveladies Harbor (marsh), then bearing approximately

190 degrees T to the westernmost point of land at the end of Bay View Road which forms the (southern bank) entrance to the Loveladies Harbor lagoon complex, then **proceeding to where a line** bearing approximately [178] **177 degrees T** to [Fl R "2"], **the standpipe in Harvey Cedars intersects the shoreline just west of Bay Terrace (Harvey Cedars), and then following the bulkhead or shoreline in a southerly direction, until reaching the south-westernmost point of land, located at the westernmost extent of Maiden Lane (Harvey Cedars), and then bearing approximately [217] 220 degrees T** to [the next] a point of land [(just SE to Fl 8 ft "82") and along] **just north of the northernmost extent of Kent Place (Harvey Cedars), and then following the western shoreline or bulkhead in a southerly direction across the mouths of the two lagoons (The northernmost lagoon located between Buckingham Avenue and Lange Avenue in Long Beach Township shall remain Condemned, and the southernmost lagoon, which is located immediately south of Lange Avenue shall also remain Condemned.)** to the bulkhead on the point of land on the southern bank forming the entrance to the second of these lagoons, then bearing approximately 205 degrees T to the [northwest] **northernmost** corner of the largest of the unnamed islands (just **northeast** of Fl 8ft "85") off the mouth of Harvey Cove (Harvey Cove itself shall remain Condemned); See: N.J.A.C. 7:12-1.3(a) then along that island's northern shoreline to its easternmost point then bearing approximately [112] **115 degrees T** to the **westernmost [nearest] point of land just west of the westernmost extent of West Salem Avenue** in Harvey Cedars, then bearing approximately 219 degrees T to the [next] **westernmost point of land (marsh) located west of the westernmost extent of James Street in Long Beach Township,** then bearing approximately 196 degrees T to the westernmost point of land located on the properties labeled as **block 104, lot 10 and block 102, lot 10 (located just southwest of the westernmost extent of a private road known as Little Bridge Road)** [just north of Barbay Road] in Long Beach Township, then bearing approximately 209 degrees T to the end of the pier at the end of Bay Shore Street in Long Beach Township, then bearing approximately 247 degrees T to **Flashing Green light "1" (Fl G "1"), then bearing approximately 224 degrees T to Flashing Red light "2" (Fl R "2"), then bearing approximately 211 degrees T to a department maintained marker on Cedar Bonnet Island,** [229 degrees T to the pier at the end of North 9th Street in Surf City (Surf City Yacht Club), then bearing approximately 239 degrees T to the point of land at the end of North 3rd Street in Surf City then bearing approximately 263 degrees T to a point of land on Cedar Bonnet,] then [along] **following the east [and south] shore[s] of that island [respectively,] to where the eastern shoreline of Cedar Bonnet Island intersects with Route 72 (Manahawkin Causeway) and then following the southern edge of that highway in an easterly direction to its terminus where Route 72 intersects with Long Beach Island (in Ship Bottom). [to its southernmost point of land, then across a small creek or thorofare to an unnamed island just to the south, then those waters lying east and south of a line]**

ii. **Southern Long Beach Island:** Seasonal—Condemned May 1 through October 31 yearly, Approved November 1 through April 30 yearly;

(1) All those waters lying east of a line beginning at the point where Route 72 (Manahawkin Causeway) intersects with Long Beach Island (in Ship Bottom) and proceeding in a westerly direction as it follows the southern edge of Route 72 (this line coincides with that described in 7:12-1.4(2) above) to where the highway intersects with the westernmost shoreline of Cedar Bonnet Island, and then following that shoreline in a generally southerly direction, but following all changes in direction of the shoreline until reaching the southernmost point of Cedar Bonnet Island, and then bearing approximately 190 degrees T to the unnamed island immediately south (this island is generally considered part of the Cedar Bonnet group) and then following that shoreline in a southerly direction to that island's southernmost point where it intersects a line beginning at the range markers ([D] department maintained) located on the above unnamed island and following that line bearing 203 degrees T to Flashing Red 8ft light "28" (Fl R 8ft "28") marking the intracoastal waterway, then bearing approximately 177 degrees T to the most northerly point of land on High Island and then following [along] this island's eastern shoreline to its southernmost [southeastern] point, then [in a straight line] bearing approximately 107 degrees T to channel marker [number] **Red Nun "36" (RN "36"),** then [continuing] bearing approximately 118 degrees T to Flashing Red light "38" (Fl R "38"), then following [in] the west side of the intracoastal waterway bearing approximately 097 degrees T to channel marker R "42" (R "42") then bearing approximately 220 degrees T to [Flashing light 44 (Fl R 8 ft "44")] **channel marker Nun "44A" (N "44A"),** then [in a straight line] bearing approximately 208 degrees T to Flashing Green light 8ft "47" (Fl G 8ft "47"), then [in a straight line] bearing approximately 254 degrees T to Can buoy "49" (C "49[A]"), then [in a straight line] bearing approximately 212 degrees T to Flashing Green light "53" (Fl G [8 ft

"53"), then bearing approximately 175 degrees T to the northernmost point of the easternmost Marshelder Island, and then following the eastern shoreline of this island in a southerly direction to this island's southernmost point, and then bearing approximately 200 degrees T [continuing in a straight line to channel marker 54 (R "54"), and then following the west side of the intracoastal waterway] to Flashing Red light 8Ft "64" [number 64] (Fl R 8ft "64"), then bearing approximately [239 degrees T to the southernmost tip of the small island off the Beach Haven Yacht Club, then bearing approximately 226]233 degrees T to the northernmost [tip of]point on Mordecai Island, then [along]following the western shore of that island to its [southwest]westernmost point, then bearing approximately [267]245 degrees T to Flashing Green light [number] "75" (Fl G [8ft] "75"), then bearing approximately [191 degrees T to a point of land, then continuing along the shoreline to the southwest, closing off the entrances in Tebco's Boat Basin and Silver Sands Marina, then from the bulkhead at the end of Inlet Drive, the line bears approximately 215 degrees T and terminates at the point of land on the south side of Holgate.] 210 degrees T to channel marker Can "77" (C "77"), then bearing approximately 195 degrees T to channel marker Can "81" (C "81"), and then bearing approximately 135 degrees T to the point where the northern boundary of the Edwin B. Forsythe National Wildlife Refuge—Barnegat Division, Holgate Unit, intersects the shoreline (Long Beach Township) where this line terminates.

3. (No change.)

4. Absecon Bay-Absecon Channel Reed Bay area: Seasonal Condemned May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

i. All of Middle Thorofare, Wills Thorofare, Absecon Channel and Absecon Bay contained within a line beginning at day beacon "73" (located at the Confluence of Broad Creek and Man Killer Bay) and bearing approximately 227 degrees T to the point of land on the western shore at the mouth of Point Bar Thorofare, then along that shoreline and across the mouth of Newfound Thorofare, then along that shoreline and across the mouth of Jonathan Thorofare, then along that shoreline to the Department maintained marker located at the mouth of the first major man-made cut or lagoon (not including mosquito ditches) and bearing approximately 036 degrees T to another Department maintained marker on the opposite bank and continuing along that shoreline in a northeast direction to the Department maintained marker, then bearing approximately 120 degrees T to the point of land on the north shore of Cordery Thorofare, then across the mouth of Cordery Thorofare, then along that shoreline in a southerly direction to a Department maintained marker, then across the mouth of Steelman Thorofare to its mouth, then in an easterly direction along Absecon Channel to Middle Thorofare, then along the northwest shoreline of Middle Thorofare to Flashing Red 74 (Fl R 10 ft "74"), then bearing 164 degrees T to its point of origin at day beacon G "73" and terminating, then along the northeast shore of Wills Thorofare and Absecon Channel to Middle Thorofare, then across Middle Thorofare to its point of origin at buoy "73" and terminating."

ii. (No change.)

5. Brigantine Area: Seasonal-Condemned May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

i. All the waters of St. Georges Thorofare from the point of land on the western shore, at the mouth of Sea King Lagoon and bearing approximately 348 degrees T to the north side of St. Georges Thorofare, then along that shoreline in a westerly direction to a department maintained marker at Rum Point, then bearing approximately 108 degrees T to the opposite shore of St. Georges Thorofare, then along that shoreline in a generally easterly direction to the point of origin.

Renumber 5.-9. as 6.-10. (No change.)

7:12-1.15 Seasonally Approved Growing Waters (Approved January 1 through April 30 yearly, Condemned May 1 through December 31 yearly)

(a) The Seasonal waters described in this subchapter shall be Condemned for the harvest of shellfish from May 1 through December 31 yearly and approved January 1 through April 30 yearly. The areas are designated on the charts referred to in N.J.A.C. 7:12-1.3 and are described as:

1. (No change.)

2. Island Beach areas: Mantoloking to Island Beach State Park: Seasonal-Condemned May 1 through December 31 yearly, Approved January 1 through April 30 yearly.

i. All of those areas lying between the lines described in N.J.A.C. 7:12-1.3(a) 10, 12, and 13 and a straight line beginning at the most westerly point of land on Dutchman's Point, just south of Mantoloking Shores, and bearing approximately 227 degrees T to the most north-westerly point of land on NW Point Island, off Chadwick Beach, then

following that island's northeasterly shore to its most easterly point of land, then bearing approximately 191 degrees T to the northwestern-most tip of the most northern of the two islands off Ocean Beach, then bearing approximately [236]246 degrees T to Flashing light "1" (Fl "1"), then bearing approximately 186 degrees T to Flashing Red light "2" (Fl R "2") off Ortley Beach, then all those waters lying between the eastern shoreline and the Thomas A. Mathis Bridge and a straight line bearing approximately [234]230 degrees T to [Fl G 8ft "43"]Flashing Green light 15ft "43" PA (Fl G 15ft "43" PA) which forms a common point of termination with the Seasonal area line described in (a)3ii below.

ii. All of those areas lying between the lines described in N.J.A.C. 7:12-1.3(a) 10, 12, and 13 including all those waters north of a straight line extending from the northernmost cupola on Island Beach State Park (Currently the Island Beach State Park Maintenance Center, formerly the old USCG Station number 110.) and bearing approximately [304]303 degrees T through [Fl R 8ft "60"]Flashing Red light 4s "60" (Fl R 4s "60") just north of Berkeley Shores. The northern boundary of this Condemned area shall be the Thomas A. Mathis Bridge.

3. Barnegat Bay-Brick Township area and Dover Township from the Metedeconk River to Toms River: Seasonal-Condemned May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. All of those areas of Barnegat Bay lying between the Condemned area line at the mouth of Kettle Creek as described in N.J.A.C. 7:12-1.3(a)1iii, and a straight line beginning at Seaweed Point and bearing approximately 135 degrees T to [Fl R 8ft "30"]Flashing Red light 15ft "30" PA (Fl R 15ft "30" PA) off Seaweed Point, and then bearing approximately 251 degrees T to Andrew Pt. on Green Island.

ii. All of those waters of Barnegat Bay lying between the lines described in N.J.A.C. 7:12-1.3(a) 11iv and a straight line extending from the point of land forming the northern bank mouth of Shelter Cove and bearing approximately 160 degrees T to [Fl R 8ft "40"]Flashing Red light "40" (Fl R "40"), then all those waters lying between the western shoreline (mainland) and the Thomas A. Mathis Bridge and a straight line bearing approximately 152 degrees T to [Fl G 8ft "43"]Flashing Green light 15ft "43" PA (Fl G 15ft "43" PA) which forms a common point of termination with the Seasonal area line described in paragraph 2i above.

4. Manahawkin Bay, Mallard Island, Beach Haven West (Village Harbor) area: Seasonal-Condemned May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. All those waters of Manahawkin and Little Egg Harbor Bays lying between the Condemned area lines described in N.J.A.C. 7:12-1.3(a)17i and 17ii and a straight line beginning on the westernmost end of the most westerly island along the Manahawkin Causeway (Route 72), then bearing approximately 173 degrees T to the most easterly [tip]point of Thorofare Island, then bearing approximately 218 degrees T to [Special Purpose buoy] department maintained marker "J", then bearing approximately 275 degrees T to [Special Purpose buoy]department maintained marker "K", then bearing approximately 032 degrees T and terminating on the southeasternmost [tip]point of Oyster Point.

5.-8. (No change.)

9. Ocean City-Somers Point area: Seasonal-Condemned May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. (No change.)

ii. Great Egg Harbor Bay, Great Egg Harbor River and Middle River: Seasonal-Condemned May 1 through December 31 yearly[,], Approved January 1 through April 30 yearly:

(1) All that portion of Great Egg Harbor Bay, Great Egg Harbor River and Middle River contained within a line beginning at the southwest tip of Drag Island and bearing approximately 266 degrees T through the south side base of the second electric tower (uncharted) to the northern-point at the mouth of the Tuckahoe River, then along the western shoreline of Great Egg Harbor River in a northwesterly direction to Middle River, then along the south shore of Middle River to the tributary leading to Swan Pond, then directly across Middle River and along the shore to Great Egg Harbor River, then along the shore of Great Egg Harbor River to Flashing [Light number 7 (Fl "7"), then across Great Egg Harbor River bearing approximately 020 degrees T to the west bank of the mouth of Lakes Creek,]Red 8 (Fl R "8") and bearing approximately 208 degrees T to a department maintained marker at the mouth of an unnamed creek, then along the eastern shore of Great Egg Harbor River in a downstream direction to the north shore of Patcong Creek, then across the line marking the mouth of Patcong Creek described in N.J.A.C. 7:12-1.3(a)28ii, then along the north shore of Great Egg Harbor Bay and Drag Channel to the Garden State Parkway, then along the eastern side of the Garden State Parkway to the northern shore of Drag Island, then

along the shoreline in a westerly direction to its origin at the southwest tip [and terminating]where this line terminates.

7:12-1.6 Seasonal Special Restricted growing waters (Special Restricted Area[s]: [June 1]May 1 through [August 31]September 30 yearly,[.] Condemned Area[s]: [September 1]October 1 through [May 31,]April 30 yearly)

(a) The Seasonal Special Restricted waters described below shall be Condemned Areas for the harvest of shellfish from [September 1]October 1 through [May 31,]April 30 yearly, and Special Restricted Areas for the harvest of shellfish only in conjunction with the approved resource recovery programs described in N.J.A.C. 7:12-2 and N.J.A.C. 7:17, during the period [June 1]May 1 through [August 31,]September 30 yearly. These waters will not be utilized, i.e., will not be available for the harvest of any shellfish, within any resource recovery program until the levels of contamination in shellfish tissue from certain heavy metals are found to be within those recommended by the U.S. Food and Drug Administration (FDA) as determined by this department from analyses of ongoing studies. This area is designated on the charts referred to in N.J.A.C. 7:12-1.3 and is described as:

1. Raritan Bay area: Seasonal Special Restricted Areas—Special Restricted Area[s] from [June 1]May 1 through [August 31,]September 30 yearly, and Condemned Areas from [September 1]October 1 through [May 31,]April 30 yearly;

i. All those waters contained within a line beginning on the northernmost point of Conaskonk Point near Union Beach, New Jersey and bearing approximately 345 degrees T to Sequine Point at Princes Bay, Staten Island, New York, until it intersects the New York-New Jersey boundary, then along that boundary in an easterly direction until it intersects the Raritan Bay East Reach Channel, then along the southwest boundary of that channel in a southeasterly direction (approximate bearing 106 degrees T) to the channel marker designated as "GR "TC" Interrupted Quick Flashing Green light ["BR"]" (GR "TC" I QK Fl G [BR]) located at the intersection of Raritan Bay East Reach, Sandy Hook Channel and Terminal Channel, and then bearing approximately 098 degrees T to the navigation aid designated as "Equal Interval 6 Second and Vertical Beam light 38ft[,] 15M Bell" (E. Int. 6 sec and VB 38ft 15M Bell) located on the shore at Sandy Hook Point, then proceeding in a generally southerly direction following the western shoreline of Sandy Hook until it intersects a line connecting Sandy Hook light, Fixed light 88ft[,] 19M (F 88ft 19M) to the northernmost extent of that pier maintained by the United States Navy in Leonardo (United States Navy Ammunition Depot-Earle) (approximate bearing 262 degrees T) and then following this intersecting line to the northern end of the Navy Pier, and then following the easternmost side of that pier to where it intersects the shoreline in Leonardo, and then following the shoreline in a generally northwest direction to the northernmost point of land on Point Comfort (Keansburg), then bearing approximately 272 degrees T to the northernmost point of land on Conaskonk Point (Union Beach), its point of origin.

#### 7:12-1.8 Sanctuaries

The department may establish areas known as sanctuaries to be utilized for research purposes such as spawner areas. Sanctuaries shall be delineated by the department. Shellfish may be relocated to such an area to supply brood stock to re-establish populations elsewhere. When shellfish from waters other than Approved are relocated to areas classified as Approved or Seasonally Approved, the relocation site (sanctuary) will be Condemned to the harvest of all shellfish.

#### 7:12-2.1 General provisions

(a)-(i) (No change.)

(j) The department may apply more restrictive delineations to harvest areas that are described in N.J.A.C. 7:12-1.3 and 1.6 by specifying the sections available for harvest on the special permit. These limitations will be made at the discretion of the department when deemed necessary to protect the health, safety, and welfare of the public.

#### 7:12-2.15 Scientific and Non-Human Collection Program

The department may continue to issue special permits for the collection of shellfish from waters classified other than Approved for the purpose of non-human consumption and scientific research. Conditions of the permit will be tailored as necessary to the specific program(s) requested. This permit is issued in conjunction with, and to the holder of, the collection permit issued by the Division of Fish, Game, and Wildlife pursuant to authority granted at N.J.S.A. 23:4-52.

(a)

## Water Supply Management Water Allocation Permit Fees

### Proposed New Rule: N.J.A.C. 7:19-3.

Authority: N.J.S.A. 58:1A, specifically 58:1A-11.

DEP Docket No. 015-86-03.

Proposal Number: PRN 1986-125.

A public hearing on the proposal will be held on:

May 21, 1986 at 1:30 P.M.

Department of Environmental Protection

Division of Water Resources

1474 Prospect St.

Trenton, NJ

Submit comments by May 21, 1986 to:

William Whipple

Department of Environmental Protection

Water Supply and Watershed

Management Administration

CN 029

Trenton, NJ 08625

The agency proposal follows:

#### Summary

The Department of Environmental Protection (Department) proposes to adopt regulations governing fees to be charged for review of applications for water supply allocation permits, pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq. The fees previously applicable to this program expired on August 1, 1985, pursuant to Executive Order No. 66(1978).

The Department's review of the prior fee rules has resulted in the conclusion that this opportunity must be taken to raise the fees to meet increased expenses resulting from expansion of the Department's water supply management program. The funds generated by these fees will be used to pay expenses associated with administering program activities associated with water supply allocation permitting and with ground water critical area protection.

The increases in the fees are intended to pay for eight new employee positions required to implement the ground water critical area protection program. The Department has designated one water supply critical area and is in the process of designating a second. The critical areas define areas within the State where, due to excessive water withdrawal or threatened water contamination, reductions in ground water withdrawal are needed. If this program is to be effective, many water allocation permits will require review and modification to make them consistent with the program objectives. Further, the ground water withdrawal reductions required as part of the critical area program involve the Department in the process of developing alternative water supplies to replace the ground water no longer available. Finally, the Department has ongoing responsibilities to study and analyze water use throughout the State to ascertain if modification in patterns of water use are required to respond to present or future threats thereto. All of these vital activities result in expenses appropriately funded from water allocation permit fees. By far the most significant change from the prior rules is an overall increase in fees (except as noted below) of approximately 60 percent, resulting from the funding requirements described above.

Additionally, the proposal includes three major changes in the previously existing water supply allocation fee rules. Under the ground water critical area program, established by N.J.A.C. 7:19-6.10 et seq., water supply allocation permits are required for persons using 10,000 to 100,000 gallons of water per day (gpd) within designated ground water critical areas, see N.J.A.C. 7:19-6.10(f). The proposal establishes fees for review of applications for such permits, Class 5 under N.J.A.C. 7:19-3.8(f) and 3.9.

The proposal also includes changes in the fee schedule for permits for dewatering proposals. At present, fees are charged for a 3-year permit, effective when the associated construction contract is executed. The proposal establishes an annual fee for such permits. Many dewatering proposals last less than three years. In the past, billing of fees has not occurred until construction is about to proceed. The proposal will allow the Department to collect the fees during the year that the permit review work is performed.

The third major change in the proposal creates a separate category for ground and surface water diversions, where the applicant will return all

of the water diverted to the source from which it was taken. The proposal sets a lower fee than was previously charged, due to the fact that this type of diversion requires significantly less staff time than required for comparable ground and surface water diversions, where the water is not so returned.

Finally, N.J.A.C. 7:19-3.8(g)3 is proposed to be changed from the previous provision to clarify the intent of the rule. As previously codified, the rule was somewhat confusing. As amended, it is clear that the Department intends that, for water systems supplying or servicing a single municipality, all surface and ground water permits are to be treated as a single permit.

For purposes of clarification, the following expired rules are not being amended by this proposal and may be found in the New Jersey Administrative Code: N.J.A.C. 7:19-3.1, 3.2, 3.3, 3.4, 3.6, 3.7. N.J.A.C. 7:19-3.5, 3.8 and 3.9 are proposed with changes to the expired text.

#### Social Impact

The fee rules provide funds which are essential for support of the water supply management functions of the Department. New Jersey is an extremely densely populated state and requires substantial water supplies to maintain and expand its economic development. Without effective and farsighted control of the quality and use of these water supplies, future development could be significantly impacted. Indeed, many of the past water use practices have resulted in substantial depletion of the water supplies available. The Department has developed one of the most sophisticated and rational water supply management programs in the country. The proposed fee schedules for water supply allocation permits contribute funds which are absolutely necessary, if this management program is to continue.

#### Economic Impact

Although significant on a percentage basis, the proposed increase in fees does not represent a large increase in actual dollars. The increases range from \$150 to \$1,880, with the largest increase being for Class 4 water users (users with allocations of more than two million gallons per day).

The proposal encompasses a 60 percent increase in fees over those in the prior rules, except in the following specific circumstances. For the new Class 5 diverters of water, there will be an economic impact directly proportional to the amount of the fees. It is estimated that there will be approximately 25 new permits in this category per year. It can be expected that five of these will qualify as diverters returning all ground water to the source and five will require hearings. As such, Class 5 permits will be expected to generate \$13,200 for initial fees and \$7,620 for annual fees. For permits for diverters returning all ground water to the source, there will be a decrease in the economic impact on this category directly proportional to the amount of the decrease in fees. Using 1985 data, there would be a decrease of \$6,960 for annual fees and a decrease of \$685 for renewal fees.

The fees for permits for diverters for dewatering proposals will now be collected in the same manner as any other permittee. Under the prior rules, only an initial fee was paid prior to initiation of construction. Under the proposal, initial fees and subsequent annual fees will be collected from this category of water user, thereby allowing the Department to collect fees within the budget period when the work is performed. The exact economic of this change cannot be determined, since it depends upon the length of time a permittee undertakes dewatering activity. If the work is completed during the year in which the permit is obtained, the fee will be lower than that under the prior rules. Permits held for more than five years will exceed prior fee obligations. It should be noted that dewatering fees were not increased by 60 percent, because dewatering projects, by their nature, involve no exacerbation of the causes for critical area designation.

#### Environmental Impact

Clean and reliable water supplies are essential to the welfare of New Jersey's citizens and businesses. Allowing uncontrolled use of water supplies, without regard to long-term needs, would result in ultimate insufficiency of water, as demand grows. By planning and properly managing available water resources, future generations can rely upon having plentiful and clean water to serve their needs. Further, during times of drought, the obvious inadequacy of past planning and management becomes evident. It is clear that, if the purity and adequacy of water supplies are to be assured in the future, conservative and farsighted management is required today. The fees in this proposal contribute to the Department's efforts to provide the necessary management strategies and regulatory controls.

Full text of the expired rules, proposed as new, may be found in the New Jersey Administrative Code at N.J.A.C. 7:19-3.

Full text of the amended rules, proposed as new, follows.

#### 7:19-3.5 Establishment of fee schedule

(a) The Department shall review the fee schedules set forth in this subchapter prior to March 1 of each year. If the Department determines that the existing fee schedule exceeds the cost of the water supply management activities funded thereunder, the fees will be reduced accordingly and a notice to that effect shall be published in the New Jersey Register.

#### 7:19-3.8 Fees

(a) All applicable fees shall be paid in accordance with fee schedule established pursuant to N.J.A.C. 7:19-3.9.

(b) Each applicant for a permit, including those not previously subject to fees pursuant to this subchapter and those with privileges previously allowed pursuant to lawful legislative or administrative action, shall pay the appropriate fee prior to issuance of the permit plus:

1. The total annual fee, if the permit is issued during the first quarter of the fiscal year; or

2. Three-quarters of the annual fee, if the permit is issued during the second quarter of the fiscal year; or

3. One-half of the annual fee, if the permit is issued during the third quarter of the fiscal year; or

4. One-quarter of the annual fee, if the permit is issued during the fourth quarter of the fiscal year.

(c) In addition to the annual fee, which shall be paid prior to August 1 of each year, a permittee renewing his or her permit shall pay the appropriate renewal fee at the time of renewal.

(d) Any applicant who fails to complete necessary forms, fails to comply with other permit processing requirements or who fails to provide information within the time frame(s) established by the Department, shall pay the annual fees which would have been due if the forms, information and processing had been completed in a timely manner, except where the Department grants an extension of time prior to an associated due date.

(e) Each permittee shall pay the annual fee each year during the term of its permit, based upon the classification for that permittee, as set forth in (f) below. Permits for which the hearing process is required may be reclassified as not requiring the hearing process, after five years have elapsed from the date of the initial hearing. If, at any time, the Department determines that additional hearings should be held, such reclassification is automatically withdrawn for another five year period.

(f) An applicant for a permit shall be placed in the appropriate class below based on the size of the allocations approved:

1. Class 1: 0.1 mgd to less than 0.5 mgd;

2. Class 2: 0.5 mgd to less than 1.0 mgd;

3. Class 3: 1.0 mgd to less than 2.0 mgd;

4. Class 4: 2.0 mgd and above; and

5. Class 5: 0.01 to less than 0.1 mgd for groundwater in critical areas, see N.J.A.C. 7:19-6.

(g) For the purpose of assessing fees under this subchapter the following shall apply:

1. A plant site or group of contiguous properties under common ownership will be entitled to a single permit.

2. For a water system supplying or servicing a single municipality only, all surface and ground water diversions may be treated as a single permit. Each dewatering contract or project shall require a separate permit.

3. For systems supplying or servicing more than a single municipality, each group of surface and ground water diversions and each group of dewatering diversions which either lie within a single municipality or lie within a square of two miles on each side will be treated as a single permit.

4. In the event that grouping of diversions under 2 or 3 above results in a diversion of less than 100,000 gallons per day, the groups shall be combined with other group(s) so that each permitted withdrawal will amount to 100,000 gpd or more.

5. If any groundwater diversion is included in a permit, the fee schedule shall be that for groundwater diversions.

(h) Annual fees or initial fees, which were due between August 1, 1985 and the effective date of these rules, shall be paid on or before August 1, 1986.

#### 7:19-3.9 Fee schedule

(a) Fees shall be charged for permits, as applicable, pursuant to the following schedules:

	Class 1	Class 2	Class 3	Class 4	Class 5
1. Initial fees for new applications:					
i. Surface water diversions not requiring hearing process	\$ 800.	\$ 900.	\$1160.	\$2000.	-
ii. Surface water diversions requiring hearing process	\$1200.	\$1350.	\$1730.	\$3000.	-
iii. Groundwater diversions not requiring hearing process	\$1000.	\$1120.	\$1450.	\$2500.	\$480.
iv. Groundwater diversions requiring hearing process	\$2000.	\$2250.	\$2900.	\$5000.	\$960.
v. Dewatering: groundwater diversions not requiring hearing process	\$ 625.	\$ 700.	\$ 905.	\$1560.	-
vi. Dewatering: groundwater diversions requiring hearing process	\$1245.	\$1405.	\$1810.	\$3120.	-
vii. Ground and surface water diversions in which waters are returned undiminished to the source	\$ 480.	\$ 640.	\$ 800.	\$ 960.	\$240.
2. Renewal fees without modification:					
i. Surface water diversions not requiring hearing process	\$ 400.	\$ 450.	\$ 580.	\$1000.	-
ii. Surface water diversions requiring hearing process	\$ 600.	\$ 670.	\$ 870.	\$1500.	-
iii. Groundwater diversions not requiring hearing process	\$ 500.	\$ 560.	\$ 730.	\$1250.	\$240.
iv. Groundwater diversions requiring hearing process	\$1000.	\$1120.	\$1450.	\$2500.	\$480.
v. Ground and surface water diversions in which waters are returned undiminished to the source	\$ 240.	\$ 320.	\$ 400.	\$ 480.	\$120.
3. Renewal fees with modifications:					
i. Surface water diversion not requiring hearing process	\$ 560.	\$ 630.	\$ 810.	\$1400.	-
ii. Surface water diversion requiring hearing process	\$ 840.	\$ 940.	\$1220.	\$2100.	-
iii. Groundwater diversion not requiring hearing process	\$ 700.	\$ 780.	\$1020.	\$1740.	\$360.
iv. Groundwater diversion requiring hearing process	\$1400.	\$1580.	\$2020.	\$3500.	\$720.
v. Ground and surface water diversions in which waters are returned undiminished to the source	\$ 240.	\$ 320.	\$ 400.	\$ 480.	\$120.
4. Annual fees for permits:					
i. Surface water diversions not requiring hearing process	\$ 800.	\$ 900.	\$1160.	\$2000.	-
ii. Surface water diversions requiring hearing process	\$1200.	\$1350.	\$1730.	\$3000.	-
iii. Groundwater diversions not requiring hearing process	\$1000.	\$1120.	\$1450.	\$2500.	\$480.
iv. Groundwater diversions requiring hearing process	\$2000.	\$2250.	\$2900.	\$5000.	\$960.
v. Dewatering: groundwater diversions not requiring hearing process	\$ 625.	\$ 700.	\$ 905.	\$1560.	-
vi. Dewatering: groundwater diversions requiring hearing process	\$1245.	\$1405.	\$1810.	\$3120.	-
vii. Ground and surface water diversions in which waters are returned undiminished to the source	\$ 480.	\$ 640.	\$ 800.	\$ 960.	\$240.

(a)

**DIVISION OF WASTE MANAGEMENT**  
**Waste Code Numbers for Hazardous Waste**  
**Containing Hazardous Constituents**

**Proposed Amendment: N.J.A.C. 7:26-8.16**

Authority: N.J.S.A. 13:1D-9 and 13:1E-6.

DEP Docket No. 014-86-03.

Proposal Number: PRN 1986-133.

Submit comments by May 21, 1986 to:

David Weinsoff  
Department of Environmental Protection  
Office of Regulatory Services  
CN 402  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The Department of Environmental Protection (Department) is proposing to assign and publish waste code numbers for the hazardous constituents listed in N.J.A.C. 7:26-8.16. The Department proposes this amendment to facilitate the manifesting of waste streams containing constituents classified as hazardous by the generator or the Department pursuant to N.J.A.C. 7:26-8.6 and 7:26-8.7. The proposed amendment will provide a mechanism to manifest constituent-containing hazardous waste streams by using unique waste codes to identify each constituent.

Currently, because waste codes are not provided for the hazardous constituents, constituent-containing hazardous waste streams are manifested with P-prefixed (N.J.A.C. 7:26-8.15(e)) or U-prefixed (N.J.A.C. 7:26-8.15(f)) waste codes. Providing unique waste codes for each listed hazardous waste constituent will allow more accurate manifesting and waste tracking. In addition, waste codes for the hazardous constituents are necessary to differentiate between the P and U listed wastes, which are subject to the land disposal ban pursuant to N.J.A.C. 7:26-7.4, 8.3, 8.15, 9.2, 10.6 and 10.8, and process wastes containing the hazardous constituents, which are not subject to the ban.

The Department is proposing to assign a unique waste code to each listed hazardous constituent which will be prefixed by the letter C. In assigning these waste codes the Department is not listing as hazardous waste all hazardous constituent-containing waste streams. Determinations on the classification of individual constituent-containing waste streams will continue to be made by the Department on a case by case basis in accordance with the procedures outlined in N.J.A.C. 7:26-8.6 and 7:26-8.7. Classes of wastes listed by the Department in accordance with the procedures set forth in N.J.A.C. 7:26-8.8 will continue to be listed with waste codes prefixed by the letter X.

**Social Impact**

The Department anticipates little social impact from this proposed amendment. On adoption, the amendment will serve only to clarify manifesting procedures for waste streams deemed hazardous because of their constituent content.

**Economic Impact**

The Department anticipates little, if any, economic impact from this proposed rule amendment since the proposal simply concerns the assignment of waste code numbers to hazardous constituents.

**Environmental Impact**

The proposed amendment is not expected to have any environmental impact since it represents only a procedural change for manifesting waste streams already handled as hazardous wastes.

Agency Note: A related Notice of Adoption appears in this issue of the New Jersey Register. See the adopted amendments concerning the Restriction of Land Disposal for Hazardous Waste, N.J.A.C. 7:26-7.4, 8.3, 8.15, 9.2, 10.6, and 10.8.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]).

7:26-8.16 Hazardous constituents

[(a) The hazardous constituents criteria for listing hazardous wastes (see N.J.A.C. 7:26-8.6) are listed below. Test methods approved by the Department shall be used in determining whether the waste in question contains a given hazardous constituent.]

Waste streams containing the hazardous constituents listed below, classified as hazardous waste by the generator or the Department pursuant to N.J.A.C. 7:26-8.6 and 8.7, shall be manifested with the corresponding waste code numbers. Test methods approved by the Department shall be used in determining whether the waste in question contains a given hazardous constituent.

- C102 (Acetato) phenylmercury
- C103 Acetonitrile
- C463 Acetophenome
- C104 3-(alpha-Acetylbenzyl)-4-hydroxycoumarin and salts
- C105 2-Acetylaminofluorene
- C106 Acetyl chloride
- C107 1-Acetyl-2-thiourea
- C108 Acrolein
- C109 Acrylamide
- C110 Acrylonitrile
- C111 Aflatoxins
- C112 Aldrin
- C113 Allyl alcohol
- C114 Aluminum phosphide
- C115 4-Aminobiphenyl
- C116 6-Amino-1,1a,2,8,8a,8b-hexahydro-8-(hydroxymethyl)-8a-methoxy-5-methylcarbamate azirino(2',3':3,4) pyrrolo (1,2-a) indole-4,7-dione (ester) (Mitomycin C)
- C117 5-(Aminomethyl) 3-isoxazolol
- C118 4-Aminopyridine
- C119 Amitrole
- C120 Aniline
- C121 Antimony and compounds, N.O.S.\*
- C122 Aramite
- C123 Arsenic and compounds, N.O.S.
- C124 Arsenic acid
- C125 Arsenic pentoxide
- C126 Arsenic trioxide
- C127 Auramine
- C128 Azaserine
- C129 Barium and compounds, N.O.S.
- C130 Barium cyanide
- C131 Benz [c] acridine
- C132 Benz [a] anthracene
- C133 Benzene
- C464 Benzene (dichloromethyl)
- C134 Benzenearsonic acid
- C135 Benzenethiol
- C136 Benzidine
- C138 Benzo [b] flouranthene
- C139 Benzo [j] flouranthene
- C140 Benzo [a] pyrene
- C141 Benzotrichloride
- C142 Benzyl chloride
- C143 Beryllium and compounds, N.O.S.
- C144 Bis (2-chloroethoxy)methane
- C145 Bis (2-chloroethyl) ether
- C146 N, N-Bis (2-chloroethyl)-2-naphthylamine
- C147 Bis (2-chloroisopropyl) ether
- C148 Bis (chloromethyl) ether
- C149 Bis (2-ethylhexy) phthalate
- C150 Bromoacetone
- C151 Bromomethane
- C152 4-Bromophenyl phenyl ether
- C153 Brucine
- C154 2-Butanone peroxide
- C465 Butyl benzyl phthalate
- C156 2-sec-Butyl-4,6-dinitrophenol (DNBP)
- C157 Cadmium and compounds, N.O.S.
- C158 Calcium chromate
- C159 Calcium cyanide
- C160 Carbon disulfide
- C466 Carbon oxyfluoride chloral
- C161 Chlorambucil
- C162 Chlordane (alpha and gamma isomers)
- C163 Chlorinated benzenes, N.O.S.
- C164 Chlorinated ethane, N.O.S.
- C467 Chlorinated flouorocarbons, N.O.S.
- C165 Chlorinated naphthalene, N.O.S.
- C166 Chlorinated phenol, N.O.S.

- C167 Chloroacetaldehyde  
C168 Chloroalkyl ethers, N.O.S.  
C169 p-Chloroaniline  
C170 Chlorobenzene  
C171 Chlorobenzilate  
C172 2-Chloro-1, 3-butadiene (Chloroprene)  
C173 p-Chloro-m-cresol  
C174 1-Chloro-2,3-epoxybutane  
C175 2-Chloroethyl vinyl ether  
C176 Chloroform  
C177 Chloromethane  
C178 Chloromethyl methyl ether  
C179 2-Chloronaphthalene  
C180 2-Chlorophenol  
C181 1-(o-Chlorophenyl) thiourea  
C182 3-Chloropropionitrile  
C497 3-Chloropropene (allyl chloride)  
C183 Chlorotoluene, N.O.S.  
C184 Chromium and compounds, N.O.S.  
C185 Chrysene  
C186 Citrus red No. 2  
C187 Copper cyanide  
C468 Cresol  
C188 Creosote  
C189 Crotonaldehyde  
C190 Cyanides (soluble salts and complexes), N.O.S.  
C191 Cyanogen  
C192 Cyanogen bromide  
C193 Cyanogen chloride  
C194 Cycasin  
C195 2-Cyclohexyl-4,6-dinitrophenol  
C196 Cyclophosphamide  
C197 Daunomycin  
C198 DDD  
C199 DDE  
C200 DDT  
C201 Diallylate  
C202 Dibenz [a,h] acridine  
C203 Dibenz [a,j] acridine  
C204 Dibenz [a,h] anthracene  
C205 7H-Dibenzo [c,g] carbozole  
C206 Dibenzo [a,e] pyrene  
C207 Dibenzo [a,h] pyrene  
C208 Dibenzo [a,i] pyrene  
C209 1,2-Dibromo-3-chloropropane  
C210 1,2-Dibromoethane  
C211 Dibromomethane  
C212 Di-n-butyl phthalate  
C492 o-Dichlorobenzene  
C493 m-Dichlorobenzene  
C494 p-Dichlorobenzene  
C469 1,4-Dichloro-2-butene  
C213 Dichlorobenzene, N.O.S.  
C214 3,3'-Dichlorobenzidine  
C470 Dichlorodifluoromethane  
C215 1,1-Dichloroethane  
C216 1,2-Dichloroethane  
C217 trans-1,2-Dichloroethane  
C218 Dichloroethylene, N.O.S.  
C219 1,1-Dichloroethylene  
C220 Dichloromethane  
C221 2,4-Dichlorophenol  
C222 2,6-Dichlorophenol  
C223 2,4-Dichlorophenoxyacetic acid (2,4-D)  
C224 Dichloropropane, N.O.S.  
C225 Dichlorophenylarsine  
C226 1,2-Dichloropropane  
C227 Dichloropropanol, N.O.S.  
C228 Dichloropropene, N.O.S.  
C229 1,3-Dichloropropene  
C230 Dieldrin  
C471 Diepoxybutane  
C232 Diethylarsine  
C234 1,2-Diethylhydrazine  
C235 0,0-Diethyl-S-methylester phosphorodithioic acid  
C236 0,0-Diethylphosphoric acid, 0-p-nitrophenyl ester  
C237 Diethyl phthalate  
C238 0,0-Diethyl-0-(2-pyrazinyl) phosphorothioate  
C239 Diethylstilbestrol  
C240 Dihydrosafrole  
C241 3,4-Dihydroxy-alpha-(methylamino)-methyl benzyl alcohol  
C242 Di-isopropylflourophosphate (DFP)  
C243 Dimethoate  
C244 3,3'-Dimethoxybenzidine  
C245 p-Dimethylaminoazobenzene  
C246 7,12-Dimethylbenz [a] anthracene  
C247 3,3'-Dimethylbenzidine  
C248 Dimethylcarbamoyl chloride  
C249 1,1-dimethylhydrazine  
C250 1,2-Dimethylhydrazine  
C251 3,3-Dimethyl-1-(methylthio)-2-butanone-O-((methylamino) carbonyl) oxime  
C253 alpha, alpha-Dimethylphenethylamine  
C254 2,4-Dimethylphenol  
C255 Dimethyl phthalate  
C256 Dimethyl sulfate  
C257 Dinitrobenzene, N.O.S.  
C258 4,6-Dinitro-o-cresol and salts  
C259 2,4-Dinitrophenol  
C260 2,4-Dinitrotoluene  
C261 2,6-Dinitrotoluene  
C262 Di-n-octyl phthalate  
C263 1,4-Dioxane  
C265 1,2-Diphenylhydrazine  
C266 Di-n-propylnitrosamine  
C267 Disulfoton  
C268 2,4-Dithiobiuret  
C269 Endosulfan  
C270 Endrin and metabolites  
C272 Ethyl cyanide  
C274 Ethylenebisdithiocarbamac acid, salts and esters  
C275 Ethyleneimine  
C276 Ethylene oxide  
C277 Ethylenethiourea  
C472 Ethyl methacrylate  
C278 Ethyl methanesulfonate  
C473 Formic acid  
C279 Flouranthene  
C280 Flourine  
C281 2-Flouroacetamide  
C282 Flouracetic acid, sodium salt  
C283 Formaldehyde  
C284 Glycidylaldehyde  
C285 Halomethane, N.O.S.  
C286 Heptachlor  
C287 Heptachlor epoxide (alpha, beta, and gamma isomers)  
C288 Hexachlorobenzene  
C289 Hexachlorobutadiene  
C290 Hexachlorocyclohexane (all isomers)  
C291 Hexachlorocyclopentadiene  
C474 Hexachlorodibenzo-p-dioxins  
C475 Hexachlorodibenzofurans  
C292 Hexachloroethane  
C293 1,2,3,4,10,19-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo, endo-dimethanonaphthalene  
C294 Hexachlorophene  
C295 Hexachloropropene  
C296 Hexaethyl tetraphosphate  
C297 Hydrazine  
C298 Hydrocyanic acid  
C476 Hydroxydimethylarsine oxide  
C299 Hydrogen sulfide  
C300 Indeno (1,2,3-c,d) pyrene  
C301 Iodomethane  
C477 Isobutyl alcohol  
C302 Isocyanic acid, methyl ester  
C303 Isosafrole  
C304 Kepone  
C305 Lasiocarpine  
C306 Lead and compounds, N.O.S.  
C307 Lead acetate  
C308 Lead phosphate

- C309** Lead subacetate  
**C310** Maleic anhydride  
**C478** Maleic hydrazide  
**C311** Malononitrile  
**C312** Melphalan  
**C313** Mercury and compounds, N.O.S.  
**C479** Mercury fulminate  
**C480** Methacrylonitrile  
**C314** Methapyrilene  
**C315** Methomyl  
**C316** 2-Methylaziridine  
**C317** 3-Methylcholanthrene  
**C481** Methyl chlorocarbonate  
**C318** 4,4'-Methylene-bis-(2-chloroaniline)  
**C319** Methyl ethyl ketone (MEK)  
**C320** Methyl hydrazine  
**C321** 2-methylactonitrile  
**C322** Methyl methacrylate  
**C323** Methyl methanesulfonate  
**C324** 2-Methyl-2-(methylthio) propionaldehyde-o-(methylcarbonyl) oxime  
**C325** N-Methyl-N<sup>1</sup>-nitro-N-nitrosoguanidine  
**C326** Methyl parathion  
**C327** Methylthiouracil  
**C328** Mustard gas  
**C329** Naphthalene  
**C330** 1,4-Naphthoquinone  
**C331** 1-Naphthylamine  
**C332** 2-Naphthylamine  
**C333** 1-Naphthyl-2-thiourea  
**C334** Nickel and compounds, N.O.S.  
**C335** Nickel carbonyl  
**C336** Nickel cyanide  
**C337** Nicotine and salts  
**C338** Nitric oxide  
**C339** p-Nitroaniline  
**C340** Nitrobenzene  
**C341** Nitrogen dioxide  
**C342** Nitrogen mustard and hydrochloride salt  
**C343** Nitrogen mustard N-oxide and hydrochloride salt  
**C346** Nitroglycerine  
**C347** 4-Nitrophenol  
**C348** 4-Nitroquinoline-1-oxide  
**C349** Notrisamine, N.O.S.  
**C350** N-Nitrosodi-N-butylamine  
**C351** N-Nitrosodiethanolamine  
**C352** N-Nitrosodiethylamine  
**C353** N-Nitrosodimethylamine  
**C356** N-Nitroso-N-ethylurea  
**C357** N-Nitrosomethylethylamine  
**C358** N-Nitroso-N-methylurea  
**C359** N-Nitroso-N-methylurethane  
**C360** N-Nitrosomethylvinylamine  
**C361** N-Nitrosomorpholine  
**C362** N-Nitrosornicotine  
**C363** N-Nitrosopiperidine  
**C482** N-Nitrosopyrrolidine  
**C365** N-Nitrososarcosine  
**C366** 5-Nitro-o-toluidine  
**C367** Octamethylpyrophosphoramide  
**C369** Osmium tetroxide  
**C370** 7-Oxabicyclo [2.2.1] heptane-2,3-dicarboxylic acid  
**C483** Paraldehyde  
**C371** Parathion  
**C372** Pentachlorobenzene  
**C484** Pentachlorodibenzo-p-dioxins  
**C485** Pentachlorodibenzofurans  
**C373** Pentachloroethane  
**C374** Pentachloronitrobenzene (PCNB)  
**C375** Pentachlorophenol  
**C376** Phenacetin  
**C377** Phenol  
**C380** Phenylmercury acetate  
**C381** N-Phenylthiourea  
**C382** Phosogene  
**C383** Phosphine  
**C384** Phosphorothioic acid, O,O-diethyl-S-[(ethylthio)methyl](Phorate)  
**C498** Phosphorothioic acid, O,O-dimethyl ester, O-ester with N,N-dimethyl benzene sulfonamide  
**C385** Phthalic acid esters, N.O.S.  
**C386** Phthalic anhydride  
**C387** Polychlorinated biphenyl, N.O.S.  
**C388** Potassium cyanide  
**C389** Potassium silver cyanide  
**C390** Pronamide  
**C392** 1,2-Propane sultone  
**C486** n-Propylamine  
**C394** Propylthiouracil  
**C395** 2-Propyn-1-ol  
**C396** Pyridine  
**C397** Reserpine  
**C398** Saccharin  
**C399** Safrole  
**C400** Selenious acid  
**C401** Selenium and compounds, N.O.S.  
**C402** Selenium sulfide  
**C403** Selenourea  
**C404** Silver and compounds, N.O.S.  
**C405** Silver cyanide  
**C406** Sodium cyanide  
**C407** Streptozotocin  
**C408** Strontium sulfide  
**C409** Strychnine and salts  
**C410** 1,2,4,5-Tetrachlorobenzene  
**C487** Tetrachlorodibenzo-p-dioxins  
**C488** Tetrachlorodibenzofurans  
**C411** 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)  
**C412** Tetrachloroethane, N.O.S.  
**C413** 1,1,1,2-Tetrachloroethane  
**C414** 1,1,2,2-Tetrachloroethane  
**C415** Tetrachloroethene (Tetrachloroethylene)  
**C416** Tetrachloromethane  
**C417** 2,3,4,6-Tetrachlorophenol  
**C418** Tetraethylidithiopyrophosphate  
**C419** Tetraethyl lead  
**C489** Tetranitromethane  
**C420** Tetraethylpyrophosphate  
**C421** Thallium and compounds, N.O.S.  
**C422** Thallic oxide  
**C423** Thallium (I) acetate  
**C424** Thallium (I) carbonate  
**C425** Thallium (I) chloride  
**C426** Thallium (I) nitrate  
**C427** Thallium selenite  
**C428** Thallium (I) sulfate  
**C429** Thioacetamide  
**C430** Thiosemicarbazide  
**C431** Thiourea  
**C432** Thiuram  
**C433** Toluene  
**C434** Toluene diamine  
**C435** o-Toluidine hydrochloride  
**C436** Toluene diisocyanate  
**C437** Toxophene  
**C438** Tribromomethane  
**C439** 1,2,4-Trichlorobenzene  
**C440** 1,1,1-Trichloroethane  
**C441** 1,1,2-Trichloroethane  
**C442** Trichloroethene (Trichloroethylene)  
**C443** Trichloromethanethiol  
**C490** Trichloromonofluoromethane  
**C444** 2,4,5-Trichlorophenol  
**C445** 2,4,6-Trichlorophenol  
**C446** 2,4,5-Trichlorophenoxyacetic acid (2, 4,5-T)  
**C447** 2,4,5-Trichlorophenoxypropionic acid (2,4,5-TP) (Silvex)  
**C448** Trichloropropane, N.O.S.  
**C449** 1,2,3-Trichloropropane  
**C450** 0,0,0-Triethyl phosphorothioate  
**C451** Trinitrobenzene  
**C452** Tris (1-azridinyl) phosphine sulfide  
**C453** Tris (2, 3-dibromopropyl) phosphate  
**C491** Trypan blue

- C455 Uracil mustard
- C456 Urethan
- C457 Vanadic acid, ammonium salt
- C458 Vanadium pentoxide (dust)
- C459 Vinyl chloride
- C461 Zinc cyanide
- C462 Zinc phosphide

**HEALTH**

The following proposals are authorized by J. Richard Goldstein, M.D., Commissioner, Department of Health; with the approval of the Health Care Administration Board.

**(a)**

**HEALTH FACILITIES CONSTRUCTION**

**Plan Review Fee Schedule**

**Proposed Amendment: N.J.A.C. 8:31-30.1**

Authority: N.J.S.A. 26:2H-5, N.J.A.C. 5:23-2.28, 5:23-11(2), 5:23-4.20(b) and 5:23-4.9(c).

Proposal Number: PRN 1986-124.

Submit comments by May 21, 1986 to:  
Leonard D. Dileo, Director  
Health Facilities Construction Service  
CN 360  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

In accordance with the State Uniform Construction Code N.J.S.A. 52:27D-119 et seq. (P.L. 1975, c.217), the Department of Health as the enforcing agency proposes to adopt by reference the Plan Review Fee Schedule as outlined in N.J.A.C. 5:23-4.20. The fee assessed upon health facilities construction project sponsors by the Department is necessary to meet its obligations as defined in N.J.A.C. 5:23-11(a). The Department of Health has the responsibility for reviewing and approving all architectural and mechanical plans for all health facility construction projects. In accordance with the regulations, no health care facility will be issued a building permit in order to commence construction until stamped and approved plans are received from the Department.

**Social Impact**

The proposed amendment will protect the health, safety and welfare of the public by assuring that all health care facility construction is adequate and maintained according to nationally recognized standards.

**Economic Impact**

The proposed amendment will economically impact those sponsors of health facility construction projects who will be assessed a higher fee to have the requisite construction plans reviewed by the Department of Health for code compliance. A concurrent economic impact will be upon the Department of Health in that it will receive increased program revenues in order to offset increased program costs related to the execution of the plans review function.

**Full text** of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]).

8:31-30.1 Architectural and mechanical plan review fee

(a) (No change.)

[(b) The Department of Health will utilize the fee schedule outlined in N.J.A.C. 5:23-4.20 of the Uniform Construction Code.]

**(b) The Department of Health will utilize the fee schedule outlined in N.J.A.C. 5:23-4.20 of the Uniform Construction Code using a multiplier of 4.0.**

(c) (No change.)

**(b)**

**HOSPITAL REIMBURSEMENT**

**Procedural and Methodological Regulations**

**Proposed Amendment: N.J.A.C. 8:31B-3.31**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b, and 26:2H-18d.

Proposal Number: PRN 1986-122.

Submit comments by May 21, 1986 to:  
Christine M. Grant  
Director Designate  
New Jersey Department of Health  
CN 360  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendment will allow hospitals to request Commission approval to transfer Commission-approved residency positions and associated costs to another hospital. The amendment is proposed in response to hospital comments on the previously proposed regulations in the December 16, 1985 Register at 17 N.J.R. 2947(a), which placed restraints on the growth of graduate medical education.

The amendment places controls on the resident transfer process. First, a hospital must conditionally accept or not accept in order to appeal for a transfer of additional resident positions. In addition, a hospital may not rise to a higher teaching status peer group if a transfer of resident positions causes it to pass a peer group threshold. However a hospital may move to a lower teaching status peer group if a reduction of resident positions by transfer takes it below a peer group threshold. Finally, the costs associated with an approved resident position may not increase as the position is transferred to another hospital.

**Social Impact**

The proposed amendment will provide greater flexibility for hospitals by substituting a statewide limit on approved resident positions rather than a hospital-specific one. Hospitals wishing to expand their teaching capability may appeal for additional positions. The Hospital Rate Setting Commission shall allocate any resident positions available for transfer. This will allow hospitals that face maldistribution problems to adjust their programs without raising the aggregate level of Commission-approved residencies in the State.

**Economic Impact**

The proposed GME transfer regulation will not result in increased costs to the State all-payer system because it will not result in an increase in the statewide level of resident positions. Allowing hospitals the flexibility to make transfers may encourage hospitals not to appeal for additional resident positions by not accepting their rates.

To ensure that transfers are made solely to fulfill educational goals, hospitals will not be permitted to rise to a higher teaching status peer group as a result of a transfer. To prevent inequities arising from hospitals that reduce their teaching efforts, a hospital will not be permitted to retain a teaching status peer group level if it has reduced its residency level below the threshold for that peer group.

To further safeguard the system and encourage transfers only for bona fide educational reasons, the costs associated with an approved residency position will not be increased as it is transferred to another hospital. This will further ensure that there will be no economic impact on the payment system.

**Full text** of the proposal follows (additions indicated in boldface thus).

8:31B-3.31 Commission adjustments and approvals

(a)-(b) (No change from proposal at 17 N.J.R. 2947(a).)

**(c) The Commission may approve hospital appeals to transfer Commission-approved resident positions and associated costs between hospitals. A hospital must conditionally accept or not accept in order to appeal for additional resident positions by transfer. A hospital may appeal under any option to reduce the number of resident positions by transfer. An addition of resident positions by transfer may not result in a change to a higher teaching status peer group. A reduction of resident positions by transfer may result in a change to a lower teaching status peer group. The approved costs associated with a transferred resident positions may not increase solely as a result of the transfer.**

(d) The Hospital Rate Setting Commission shall decide the hospital to which approved resident positions and associated costs may be transferred.

(a)

**DIVISION OF HEALTH FACILITIES EVALUATION**

**Alcoholism Treatment Facilities  
Standards for Licensure**

**Proposed Readoption: N.J.A.C. 8:42A**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.  
Proposal Number: PRN 1986-125.

Submit comments by May 21, 1986, to:  
Wanda J. Marra, Coordinator  
Standards Program  
Division of Health Facilities Evaluation  
Department of Health  
CN 367  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The current licensure standards for Alcoholism Treatment Facilities, N.J.A.C. 8:42A, will expire on June 12, 1986, pursuant to the "sunset" provisions of Executive Order No. 66(1978), which mandates the expiration of a rule at the end of five years. The Department proposes to readopt without change N.J.A.C. 8:42A for a five-year period.

The current N.J.A.C. 8:42A became effective on July 9, 1981. Since July 9, 1981, six amendments to the rules have been proposed and adopted. The rules were amended effective March 7, 1983, at which time N.J.A.C. 8:42A-3.7(a)24 was affected since a new rule, concerning employee health examinations, N.J.A.C. 8:31-26.3, was adopted. See: 12 N.J.R. 463(b), 12 N.J.R. 578(c). Also effective March 7, 1983, was an amendment to N.J.A.C. 8:42A-2.2(b) which changed the licensure fee from \$100.00 to a fee schedule based on the number of beds in the facility. The new fees ranged from \$100.00 to a maximum of \$500.00. See: 14 N.J.R. 1273(a), 15 N.J.R. 336(a). N.J.A.C. 8:42A-2.2(b) was further amended effective July 15, 1985, to allow the Department to charge a non-refundable fee of \$500.00 plus \$3.00 per bed for the filing of an application for the licensure of an alcoholism treatment facility and any annual renewal thereof. See: 17 N.J.R. 664(a), 17 N.J.R. 1760(b). The rule regarding ownership, N.J.A.C. 8:42A-3.2(b) was amended, effective June 20, 1983, in accordance with N.J.A.C. 8:31-26.1. The amended rule prohibits a person from owning or operating a health care facility if that person has been convicted of a crime relating adversely to his or her capability of owning or operating the facility. See: 15 N.J.R. 307(a), 15 N.J.R. 1021(a). Effective, August 20, 1984, a new rule was adopted to be cited as N.J.A.C. 8:31-26.6 regarding reporting information to the New Jersey State Board of Medical Examiners. See: 16 N.J.R. 804(a), 16 N.J.R. 2279(a). An amendment, N.J.A.C. 8:42A-2.1(c), was added to the rules for alcoholism treatment facilities, and became effective February 4, 1985. This amendment requires the facility to implement all conditions imposed by the Commissioner of Health as specified in the Certificate of Need approval letter. Failure to implement the conditions may result in the imposition of sanctions in accordance with Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto. See: 16 N.J.R. 3125(a), 17 N.J.R. 285(a).

Chapter 305, P.L. 1975, Alcoholism Treatment and Rehabilitation Act of 1976 (ATRA), N.J.S.A. 26:2B-7 et seq., established the Division of Alcoholism in the State Department of Health, provided for a director and assistant to the director of that Division, created an advisory council on alcoholism, provided for the licensing of alcoholic treatment facilities, prescribed procedures to be followed concerning the arrest of an intoxicated person, authorized the establishment of a service force, prohibited and repealed county and municipal ordinances and resolutions prescribing penalties for public intoxication, and repealed P.L. 1948, c.453 (C. 26:2B-1 et seq.). Alcoholism as a legal offense was decriminalized by the Alcoholism Treatment and Rehabilitation Act of 1976 (ATRA). As a result alcoholism was removed from the court system and was legally recognized as an illness requiring medical treatment.

ATRA not only provides for the licensure of alcoholism treatment facilities by the Department of Health, it also requires that the Department "promulgate rules and regulations establishing licensure standards and requirements," including, for example, "the health and safety standards to be met by a facility" and "the quality and nature of the treatment

to be afforded patients at a facility." In addition, Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto, establishes the Department's authority to license and regulate health care facilities and to promulgate licensure standards for these facilities.

An internal review and evaluation of N.J.A.C. 8:42A by the Department indicated that this chapter has been effective in assisting the Department to carry out the functions mandated by the Health Care Facilities Planning Act, and the Alcoholism Treatment and Rehabilitation Act. N.J.A.C. 8:42A is necessary for the Department to effect its legal mandates to protect the health and safety of the patients in the alcoholism treatment facilities in New Jersey and to assure minimum quality care and the provision of required services.

Readoption of the Standards for Licensure of Alcoholism Treatment Facilities will provide rules for alcoholism treatment facilities where a continuum of care is provided. This chapter includes rules for acute medical detoxification and rules for treatment and rehabilitation services in residential facilities. By readopting N.J.A.C. 8:42A, the Department will ensure minimum regulations and cost effective quality care and treatment for the alcoholic patient. The disease of alcoholism and the associated problems of alcohol abuse constitute a significant health problem. By readopting these rules, the Department can ensure that those seeking treatment for their disease will be the recipients of cost-effective quality care and treatment.

The Department intends to amend N.J.A.C. 8:42A based on suggestions from the Division on Alcoholism and the Quality and Utilization Review Committee of the New Jersey Advisory Council on Alcoholism. Due to time constraints and priorities within the Department, it has not been possible to amend the current rules prior to the expiration date of June 12, 1986, mandated by Executive Order No. 66(1978). In proposing the readoption of N.J.A.C. 8:42A, the Department has also taken into consideration the considerable amount of time necessary to complete the procedures for the promulgation of amendments. Until this chapter is amended, it is imperative that the current text of N.J.A.C. 8:42A be readopted without change. The Department needs these rules to accomplish its legal mandates and, pursuant to the regulatory process, to assist the Department to continue its efforts to provide minimum standards for quality care.

N.J.A.C. 8:42A, Alcoholism Treatment Facilities, consists of 25 subchapters. A summary of the current text of N.J.A.C. 8:42A follows:

N.J.A.C. 8:42A-1.1 provides definitions of the technical terms used throughout the rules and delineates the qualifications required of staff members.

The licensure procedure for alcoholism treatment facilities is detailed in N.J.A.C. 8:42A-2, which includes rules regarding Certificate of Need, application for licensure, newly constructed or expanded facilities, surveys and temporary license, surrender of license, waiver of rules, and action against a license. The licensure procedure also entails the payment of a licensure fee of \$500.00 plus \$3.00 per bed (see: N.J.A.C. 8:31-26.5(a)1).

The general requirements for alcoholism treatment facilities are delineated in N.J.A.C. 8:42A-3.1 through N.J.A.C. 8:42A-3.18. The facilities are required to provide preventive, diagnostic, therapeutic, and rehabilitative services to patients. Hospitals providing acute medical detoxification and/or residential alcoholism treatment services shall comply with N.J.A.C. 8:43B, Manual of Standards for Hospital Facilities, and with N.J.A.C. 8:42A. Requirements regarding records, reports, and documents are stated in N.J.A.C. 8:42A-3.3 and 3.4. N.J.A.C. 8:42A-3.5 includes general personnel requirements and specifies the minimum ratio of staff members to patients, based on the daily census. Additional staffing requirements, including those for staff orientation and education, can be found in N.J.A.C. 8:42A-3.9. The establishment, implementation, and review of a policy and procedure manual are required by N.J.A.C. 8:42A-3.7 and 3.8. The requirements regarding the policy and procedure manual are similar to those which appear in manuals of standards for licensure of other types of health care facilities. Subchapter 3 of N.J.A.C. 8:42A also has rules regarding consultants, transfer agreements, reportable events, and notices to be posted in the facilities.

N.J.A.C. 8:42A-4 addresses the responsibility of the governing authority. The appointment and the availability of an administrator and an alternate administrator is required by N.J.A.C. 8:42A-5.1. The responsibilities specified in N.J.A.C. 8:42A-5.3 are indicative of the varied duties of the administrator.

N.J.A.C. 8:42A-6.1 specifies that the facility establish and implement written patient care policies and procedures. The items which are to be addressed in the patient care policies and procedures are listed in N.J.A.C. 8:42A-6.1(b)1 through 27 and are intended to facilitate patient care as

well as continuity of patient care. Thus, N.J.A.C. 8:42A-6.1(b) requires policies and procedures for patient rights, emergency care of patients, care of patients with a communicable disease, limiting verbal and telephone orders to emergency situations and requiring countersigning of such orders within 24 hours, assisting patients in obtaining health and social services, delineating the housekeeping activities that patients may perform as part of the therapeutic regime, criteria and procedures for admitting, discharging, and readmitting patients, restrictions to the admission and retention of patients, interviewing patients prior to admission, a requirement for a written agreement or admission form, financial arrangements, as well as care of deceased patients, and evaluation of each patient to determine use of alcohol and/or use of medications not prescribed for him or her, and procedures in the event that a patient is found to be using alcohol and/or medications not prescribed for him or her. N.J.A.C. 8:42A-6.2 requires the facility to establish a patient care policy committee and indicates that the committee and the governing authority shall review annually all patient care policies and procedures developed by the committee, as well as all policies developed and implemented by each service, and shall document the review.

Subchapter 7 of N.J.A.C. 8:42A requires the appointment of a medical director responsible for the direction, provision, and quality of the medical care provided. N.J.A.C. 8:42A-7.1(a)1 requires that the medical director or his or her alternate, who shall be a physician, shall be available to patients 24 hours a day, seven days a week. If the facility provides acute medical detoxification services, the medical director or his or her alternate shall be on the facility's premises daily, as stated in N.J.A.C. 8:42A-7.1(a)2. N.J.A.C. 8:42A-7.2 and 7.3 enumerate the specific duties and responsibilities of the medical director. Administrative responsibilities and the responsibilities of the patient's physician are delineated in N.J.A.C. 8:42A-7.4 and 7.5. N.J.A.C. 8:42A-7.6 requires that the patient's physician perform a history and physical examination, write initial and subsequent orders for services to be provided to the patient, and develop the medical portion of the patient treatment plan.

Rules regarding nursing services are stated in Subchapter 8 of N.J.A.C. 8:42A. Staffing requirements and the requirement to designate a registered professional nurse as the director of nursing services are specified in N.J.A.C. 8:42A-8.1. The responsibilities of the director of nursing services are delineated in N.J.A.C. 8:42A-8.2. Nursing responsibilities and the medical record entries for which nursing personnel are responsible are specified in N.J.A.C. 8:42A-8.3 and 8.4, respectively.

N.J.A.C. 8:42A-9 contains rules regarding patient assessment and treatment planning and requires that the facility provide for a continuum of patient care. N.J.A.C. 8:42A-9.3 through 9.6 delineate the content of the patient assessment which shall include, but not be limited to, the medical, psychological, social, recreational, legal, and vocational needs of the patient. N.J.A.C. 8:42A-9.7 requires that a patient treatment plan, based upon the completed patient assessment, be prepared for each patient by a multidisciplinary team, with the patient's participation.

N.J.A.C. 8:42A-10 sets forth the rules for alcoholism counseling and supportive services to be provided to patients in accordance with the patient treatment plan, based upon the patient assessment. N.J.A.C. 8:42A-10.1, 10.2, and 10.3 describe the required alcoholism counseling services which require that each patient be assigned to an alcoholism counselor and that counseling be provided at a specified frequency and duration. N.J.A.C. 8:42A-10.4 and 10.5 delineate the responsibilities of the director of alcoholism counseling and of the alcoholism counselors, respectively. Rules regarding supportive services, such as vocational and educational counseling, social services, legal services, and availability of support groups such as Alcoholics Anonymous, Al-Anon, and Alateen, are contained in N.J.A.C. 8:42A-10.6.

N.J.A.C. 8:42A-11 establishes the facility's responsibility for the provision of patient activities and the administrator's duties in fulfilling this responsibility.

The rules contained in N.J.A.C. 8:42A-12 require the facility to provide laboratory, radiological, and diagnostic services directly or through written agreement.

Rules for pharmaceutical services, which may be provided either directly or through written agreement, are specified in N.J.A.C. 8:42A-13. N.J.A.C. 8:42A-13.2 establishes the multidisciplinary pharmacy and therapeutics committee and lists the policies and procedures to be developed by that committee. N.J.A.C. 8:42A-13.3 requires the appointment of a director of pharmaceutical services or a consultant pharmacist and specifies his or her responsibilities. The responsibilities of nursing personnel related to pharmaceutical services are included in N.J.A.C. 8:42A-13.4.

Rules regarding dietary services are stated in N.J.A.C. 8:42A-14. N.J.A.C. 8:42A-14.1(c) requires that a dietitian be appointed on a full-time, part-time, or consultant basis. The duties and responsibilities of the dietitian are enumerated in N.J.A.C. 8:42A-14.2. The facility's responsibilities related to the dietary service are found in N.J.A.C. 8:42A-14.3. N.J.A.C. 8:42A-14.4(a) requires the appointment of a food service supervisor who, if not a dietitian, must function with scheduled consultation from a dietitian. The duties and responsibilities of the food service supervisor are delineated in N.J.A.C. 8:42A-14.4(b).

Subchapter 15 of N.J.A.C. 8:42A sets forth the patient rights for alcoholism treatment facilities and allows religious observance, mail communication, control of personal property, freedom from mental and physical abuse and freedom from discrimination or reprisal. These rules are similar to those contained in licensure manuals for other types of health care facilities and are intended to ensure that patients are treated in a manner which recognizes and respects their basic human rights.

N.J.A.C. 8:42A-16, regarding emergency services and procedures, requires a written emergency plan, simulated drills, the posting of the emergency plan and all emergency procedures throughout the facility, and the availability at all times of emergency medical services, directly or through written agreement with a hospital licensed by the Department.

The alcoholism treatment facilities are required to provide aftercare services in accordance with N.J.A.C. 8:42A-17. The rules require an aftercare plan for each patient, utilizing a multidisciplinary team approach in planning and providing aftercare services, with the participation of the patient and his or her family.

The facility is required by N.J.A.C. 8:42A-18 to maintain a medical record for each patient. N.J.A.C. 8:42A-18.3 specifies the contents of a complete medical record, including at least patient identification data; name of patient's physician; signed acknowledgment of receipt of patient rights; a patient assessment; a patient treatment plan, including the medical portion of the patient treatment plan, signed and dated by the physician; a record of physician visits; a record of medications administered; and the aftercare plan. Policies and procedures regarding the release of medical records to patients are required by N.J.A.C. 8:42A-18.9. Rules regarding transfer of medical records are specified in N.J.A.C. 8:42A-18.10.

Patient care statistics and financial data requirements are stated in N.J.A.C. 8:42A-19 and 20, respectively, pursuant to Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto.

The purpose of N.J.A.C. 8:42A-21, regarding infection prevention and control, is to allow the facility flexibility to develop, implement, and enforce an infection prevention and control plan appropriate for the facility.

The alcoholism treatment facility may provide volunteer services as an integral part of the facility's services. If the facility provides volunteer services, these services shall be provided in accordance with N.J.A.C. 8:42A-22. Volunteers shall not provide services in lieu of facility staff.

Housekeeping, sanitation, and safety are the topics of N.J.A.C. 8:42A-23. The Department expects that compliance with the specified practical requirements will result in the provision of a safe and sanitary environment for patients, personnel, and visitors.

The facility is required by N.J.A.C. 8:42A-24 to establish and implement a written plan for the audit and evaluation of patient care. The objective of the rules is to enhance the ability of the facility to provide appropriate, quality patient care through the identification and resolution of problems.

The rules concerning construction are delineated in N.J.A.C. 8:42A-25.

#### Social Impact

The disease of alcoholism and the associated problems of alcohol misuse constitute a very significant health problem.

The magnitude of the social benefits which will result from the re-adoption of N.J.A.C. 8:42A derives from the broad and severe adverse social consequences of alcoholism and alcohol misuse. Many of these consequences are described and statistical data regarding their occurrence are presented in a report prepared by the Department entitled "How Healthy Are New Jerseyans?" (December, 1984). Alcohol has been found to have a negative impact on a wide range of physiological systems and to be associated with a number of biomedical disorders.

Cirrhosis, which ranks among the 10 leading causes of death, is largely attributable to alcohol consumption. Alcohol use is also associated with cancer, particularly cancer of the liver, esophagus and mouth. People who drink and also smoke cigarettes have a higher than normal rate of esophageal cancer. Also, excessive drinking during pregnancy can

produce infants with severe abnormalities. Heavy alcohol use during pregnancy has also been associated with a cluster of distinctive physical and mental impairments known as the Fetal Alcohol Syndrome. Alcoholism, long viewed as one of the hazards of adulthood, has recently been reported to be making epidemic inroads into the ranks of the young, especially teenagers. The detrimental consequences of alcoholism and alcohol misuse extend to families as demonstrated by the correlation of instances of child abuse and divorce with the existence of alcohol problems. The far-reaching consequences of alcoholism and alcohol misuse affect all aspects of American life—the non-drinker as well as the drinker. Society is the victim of the criminal activity and the traffic fatalities which may accompany alcoholism and alcohol misuse.

The adverse social impact of alcoholism and alcohol misuse, as described above, underlies the importance of readopting N.J.A.C. 8:42A. Since its adoption, N.J.A.C. 8:42A has contributed to the mitigation of the consequences of alcoholism and alcohol misuse by promoting the provision of care of high quality to persons with alcohol problems and has implemented the authorizing legislation. Services provided in these facilities include acute medical detoxification and treatment and rehabilitation services. These rules are not intended to direct specific regimens of treatment, but rather to set forth minimum requirements for safe patient care. The rules reflect the Department's concern for protecting the rights of patients as citizens.

#### **Economic Impact**

As a result of the overuse and general social acceptance of alcohol throughout American society, alcohol-related problems account for a significant share of New Jersey's medical care cost burden.

The economic burden associated with the misuse of alcohol is enormous. The Departmental report entitled "How Healthy Are New Jerseyans?" indicates that much of the total economic cost of alcoholism and alcohol misuse is due to "lost production of goods and services" and to expenditures for "alcohol-related health and medical services," including expenditures for hospital services. Other economic costs result from alcohol-related motor vehicle accidents, crime, and fire losses.

Alcoholism, however, is a treatable disease. The economic value of readopting the current licensure standards for alcoholism treatment facilities, N.J.A.C. 8:42A, lies in the propensity of the rules for ensuring the provision of treatment services of such quality that the need for medical treatment and the impairment of human performance are reduced. These reductions, in turn, lead to a diminution of health care costs and an augmentation of economic productivity.

The readoption of the current rules will ensure continuity of services to patients in the 24 licensed alcoholism treatment facilities in New Jersey. The readoption of the rules will have no new discernible economic impact on the alcoholism treatment facilities, the Department, or patients since these rules are already in effect. The alcoholism treatment facilities will not incur any additional expense because they are already adhering to these rules. Similarly, the Department's expenditures will not increase because alcoholism treatment facilities are currently being surveyed using these rules.

An additional benefit of the readoption of N.J.A.C. 8:42A is the anticipated cost-effectiveness of alcoholism treatment provided in accordance with these rules.

**Full text** of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:42A.

## **DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT**

For proposal numbered PRN 1986-126, submit comments by May 21, 1986 to:

John A. Calabria, Coordinator  
New Jersey State Department of Health  
CN 360, Room 604  
Trenton, New Jersey 08625

### **(a)**

#### **Certificate of Need: Standards and Criteria for the Demonstration of Extracorporeal Shock Wave Lithotripsy (ESWL) Services**

#### **Proposed Amendments: N.J.A.C. 8:33B-1.3**

#### **Proposed New Rule: N.J.A.C. 8:33B-1.12**

Authority: N.J.S.A. 26:2H-1 et seq.

Proposal Number: PRN 1986-126.

The agency proposal follows:

#### **Summary**

The Department of Health recently adopted a new rule (N.J.A.C. 8:33B-1.1 et seq., effective October 7, 1985) which established an Extracorporeal Shock Wave Lithotripsy (ESWL) demonstration period which permitted the approval of two lithotripter applications Statewide. The need for a maximum of two lithotripter demonstration sites in the State was based on an incidence rate for urinary calculi and a percentage of patients expected to be candidates for ESWL services that is now considered to be conservative as clinical experience with this equipment continues to increase. In view of an expanded range of indications for ESWL as well as the fact that a sizable number of ESWL patients may be treated on an outpatient basis (thus increasing the cost savings associated with this non-invasive treatment modality), the need for a third lithotripter demonstration site is now considered to be a prudent and necessary investment. The addition of a third lithotripter demonstration site would assure geographic ESWL accessibility for all residents of the State needing this new treatment modality, thus contributing to the orderly development of ESWL services throughout the State.

The Department has also established a new section at N.J.A.C. 8:33B-1.12 titled "Reimbursement", which establishes a statewide reimbursement rate for the technical fee for ESWL services. This rate will be based on reasonable costs for the delivery of ESWL services at the statewide demonstration sites.

#### **Social Impact**

The incidence rate nationally for all urinary calculi ranges from 1 to 2 per thousand population. This differential of 100 percent in incidence of disease results in a relatively wide disparity in projecting the number of individuals that not only suffer from the disease but would likely benefit from the availability of ESWL services. Utilizing 1990 New Jersey population projections the range of patients suffering from urinary calculi each year is estimated to be between 7,900 and 15,800. Within this potential demand there is also a range of treatment modality expectations (e.g., medication, surgery, percutaneous lithotripsy, ESWL and combinations of these modalities) that are based upon existing experience. As we gain greater understanding of with ESWL equipment and techniques the referral base for these services is expected to expand.

Application of this range of incidence and utilization rates of 15 to 30 percent as applied to New Jersey's population yields a Statewide need estimate ranging from 1185 patients annually to a maximum of 4,740 patients annually. The latter maximum caseload estimate assumes the highest incidence rate (2 per thousand) and the highest possible ESWL use rate of 30 percent (representing virtually all upper tract stones and suggested by the Ad Hoc Committee on ESWL of the American Urological Association; Dornier, the only FDA approved manufacturer of the device initially suggested a more conservative use rate of 15 percent).

In order to insure efficient use of expensive technology and to insure adequate access to this service, the Department proposes increasing the number of lithotripter sites to three, allowing a treatment capacity of no less than 3,000 patients annually.

#### **Economic Impact**

The major economic impact of ESWL rests with its non-invasiveness as compared to conventional kidney stone surgery. By sharply reducing the length of stay in the hospital and eliminating the post-operative

convalescent period, this new technology has potential to substantially reduce the patient costs associated with conventional kidney stone surgery. The cost reductions offered by ESWL over conventional surgery are approximately \$2,000 per patient and are largely the result of reduced hospitalization requirements. Many lithotripter proponents, including the majority of applicants seeking ESWL approval in New Jersey, anticipate further cost reductions for those patients treated on an outpatient, same-day basis, thereby eliminating entirely the costs associated with inpatient hospitalization. These proponents estimate outpatient procedures could comprise from 20 to 80 percent of ESWL candidates, adding significantly to the cost saving potential of this therapeutic modality.

While the introduction of ESWL services will have profound implications for kidney stone patients, it must be emphasized that lithotripter equipment has application to a very limited and specific population. Cost savings associated with ESWL will only occur where provision is made to limit proliferation of these devices so as to ensure a sufficient volume of candidates at each demonstration site. In this way the cost effective delivery of the ESWL service can be ensured. The Department's proposal to establish a Statewide technical fee for ESWL treatment (N.J.A.C. 8:33B-1.12) will allow an approved demonstration applicant to share the economic burden of providing ESWL services.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

#### 8:33B-1.3 Demonstrations

(a) The Commissioner of Health will establish a lithotripter demonstration period during which [two] **three** applications will be approved Statewide.

(b) (No change.)

(c) Once the demonstration approvals, [two] **three** units Statewide, are issued, the Department of Health shall not process any other applications for lithotripters until the conclusion of the demonstration period, not to exceed two years, beginning with the date of operation of the first lithotripter demonstration.

(d)-(f) (No change.)

#### 8:33B-1.12 Reimbursement

(a) **In establishing reimbursement to applicants who have been approved as demonstration sites for ESWL services, the Department shall develop a Statewide technical fee for ESWL treatment based on reasonable costs for the provision of ESWL treatment services.**

## HIGHER EDUCATION

For the following proposals, submit comments by May 21, 1986 to:  
Grey J. Dimenna, Esq.  
Administrative Practice Officer  
Department of Higher Education  
225 West State Street  
CN 542  
Trenton, NJ 08625

### (a)

#### BOARD OF HIGHER EDUCATION

#### Management of Computerized Information

#### Proposed New Rules: N.J.A.C. 9:2-5.1 through 9:2-5.10

Authorized By: Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.

Authority: N.J.S.A. 18A:3-13, 18A:3-14(1.) and 18A:3-15.  
Proposal Number: PRN 1986-119.

The agency proposal follows:

##### Summary

As the State entity responsible for the supervision of higher education, the Board of Higher Education receives much information and records covering both individual and group data concerning issues within the higher education sector. The proposed new rules set standards for the retention of such data, its release and availability to various groups.

##### Social Impact

The proposed new rules create a uniform policy regarding the release of data held by the Department of Higher Education which will guard

against the accidental or inappropriate release of information regarding affected individuals which should remain confidential.

##### Economic Impact

As this proposal solely governs the release of records and information held by the Department of Higher Education, there is no economic impact created.

**Full text** of the proposed new rules follows:

#### SUBCHAPTER 5 MANAGEMENT OF COMPUTERIZED INFORMATION

##### 9:2-5.1 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Affected individual" means the person who is the subject of the information contained in a record.

"Chancellor" means the Chancellor of the New Jersey Department of Higher Education, also sometimes referred to in these rules as DHE.

"Computer" means an electronic device or another similar device capable of executing a computer program, including arithmetic, logic, memory or input-output operations, by the manipulation of electronic or magnetic impulses and includes all computer equipment connected to such a device.

"Data" are facts expressed in numerical form or categorical information that is encoded.

"DHE Statistical Office" is any office in the New Jersey Department of Higher Education designated by the Chancellor which maintains on a computer individualized records or record files containing personally identifiable information.

"Individualized records" are all records that contain sensitive data relating to individual students, faculty members, administrative employees or other staff.

"Institution" means an institution of collegiate level in New Jersey which is approved or licensed by the State Board of Higher Education.

"Personally identifiable information" means facts, features or traits that uniquely identify a person and includes, but is not limited to name, social security number, date of birth, place of birth, race, sex and any computer representation of these items.

"Record" shall mean a group of related facts, elements or fields of information that are treated as a unit and stored in a computer for processing.

"Sensitive data" are information that may affect a person's reputation or value in the eyes of others or that may be an invasion of privacy if disclosed. The term includes salary, income and financial status, but is not limited to these three items. Marital status may also be deemed sensitive under some circumstances.

"Third party" shall mean any person or persons who are neither employees of the Department of Higher Education nor of any New Jersey public or independent institutions of higher education.

##### 9:2-5.2 Compliance with federal and State laws

(a) The records management practices of the Department of Higher Education (DHE) shall comply with all applicable State and federal laws relating to disclosure of information.

(b) The Department of Higher Education shall protect and retain records in computerized data files that support decision making and operational functions in a manner which is consistent with State and federal law.

##### 9:2-5.3 Protection of privacy rights

(a) Any personally identifiable information on records maintained by the Department of Higher Education will consist only of items required for accountability of the expenditure of public funds, legitimate reports, and research studies by the Board of Higher Education.

(b) All records containing personally identifiable information collected by the Department of Higher Education shall be protected in such a manner that affected individuals shall not be identifiable by persons other than appropriate DHE officials, and other persons who, by specific provision of law, are entitled to access to such records.

(c) The Chancellor or his designee shall not disclose to the public or any federal, State or local agency individualized records except as required under State and federal law.

(d) Upon written application to the Chancellor, individualized student records may be made available to statutorily authorized non-DHE staff with legitimate educational interests. Such application shall summarize the objectives of the research, methodology and projected date for completion. An agreement that the applicant will not permit any other party

to have access to such information without the written consent of the student and that a report on the study results will be forwarded to DHE must be provided. Individualized records that are made available to non-DHE staff shall not contain the student's name, social security number, and zip code of home address.

(e) The Department of Higher Education shall destroy all individualized records, protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. Section 1232g, as amended, within 10 years of the record's creation or when such information is no longer necessary in connection with the audit or evaluation of any program, whichever is shorter. Other individualized records shall be destroyed in accordance with State law concerning records retention.

#### 9:2-5.4 Security of computer files

(a) Record files shall reside on computers with operating security systems that allow DHE officials to explicitly control access to data records.

(b) To control the potential harm that could result from deliberate or inadvertent privacy breaches of records containing personally identifiable information, name and social security numbers shall not be maintained in the same record unless the file is principally utilized for the accountability of the expenditure of public funds.

#### 9:2-5.5 Prevention of statistical disclosure

(a) Data will not be disseminated outside the DHE statistical offices in a form that permits the identification of data relating to any individual, unless specific provision of State or federal law requires disclosure.

(b) When information is distributed in tabular form by DHE statistical offices the generally accepted practice of suppressing information based on fewer than three individuals shall be followed, especially when cross-classifications involve income, parental marital status or other sensitive data.

#### 9:2-5.6 Access rights of affected individuals

(a) Specific description of the data possessed by the DHE relating to an affected individual will be provided to the affected individual upon request. Inquiries should be addressed to the Chancellor at the Department of Higher Education's offices in Trenton.

(b) Any affected individual may, upon application to the Chancellor or his designee, inspect, review or seek correction of any records of that individual maintained by the department. Copies of such records will be provided for a fee equal to the actual reproduction or computer processing costs.

(c) An affected individual shall have the opportunity for a hearing to challenge the content of the record related to that individual. The Chancellor shall designate an appropriate person to act as hearing officer. The process shall be conducted in accordance with federal regulations (34 CFR 99.21 and 34 CFR 99.22).

(d) The Department of Higher Education shall not disclose to an affected individual the content of records related to that individual, if a waiver of access to the same records was given by the individual to a New Jersey institution of higher education pursuant to State or federal law.

(e) The Department of Higher Education shall provide access to the records which relate to an affected individual within a reasonable period of time after receiving a request to review such records but in no case later than 30 days after the request has been made.

#### 9:2-5.7 Accounting of certain disclosures

(a) Where the Department of Higher Education is required by State or federal law to provide access to records containing personally identifiable information, it shall maintain a log of all individuals, agencies or organizations which have requested or obtained access to any such records indicating the legitimate interest under State or federal law that each such person, agency, or organization has in obtaining this information. All such information transferred to a third party shall include a written statement indicating that such party shall not permit any other party to have access to such information without the written consent of the person to whom those records relate.

(b) The Department of Higher Education shall retain the log made under (a) above for at least five years after the disclosure for which the log entry is made, or the life of the record, whichever is longer.

(c) Except for disclosures made under 20 U.S.C. Section 1232g(b)(1)(A) to teachers and other officials within the institution in which the student is enrolled, the Department of Higher Education shall make the particularized log entries under (a) above available to the individual named in the record at his request.

(d) DHE shall inform any third party about any correction or notation of dispute to any record that has been disclosed to the third party.

#### 9:2-5.8 Modes of information release

(a) Data that has not been verified and reviewed for accuracy by the submitting institution will be considered preliminary and not subject to disclosure.

(b) Institutions will be given 10 working days from receipt of edited data to verify and review it for accuracy. After the review period, or when the data has been re-edited, it will be considered final and subject to disclosure.

(c) A third party who requests that a DHE statistical office prepare data in tabular form may be assessed costs of production, including the costs of programming and computer time. When such a statistical report identifies a New Jersey institution of higher education and reveals data about that institution's operation, a copy of the tabulations will be forwarded to the institution.

(d) Data from individualized records that New Jersey colleges furnish DHE statistical offices may not be released by telephone, except upon proper identification of the caller as someone who is entitled access to such records.

(e) Aggregate data compiled from individualized records that New Jersey institutions of higher education may furnish a DHE statistical office may be released by telephone to a third party.

#### 9:2-5.9 Nonpublic records

(a) The following records shall not be deemed to be "public" records subject to inspection and examination and available for copying pursuant to the provisions of The Right to Know Law, N.J.S.A. 47:1A-1 et seq:

1. Any record containing accumulated grade point averages, test scores, grades or other examination data for an individual student;
2. Any record containing income for a student or parents of a student;
3. Any record containing the name or social security number of an individual;

4. Any record containing data which were made available under the condition that the information shall be considered private and confidential.

#### 9:2-5.10 Information accessible to the public

(a) Information that characterizes a New Jersey institution of higher education and is stored as aggregate data in computers are "public" records.

(b) Access to "public" records shall be granted in accordance with all applicable federal and State laws concerning a citizen's right to inspect and copy official records of government.

(c) All requests to obtain or copy certain "public" records shall be made in writing and shall specify under what authority the information is sought.

(d) Any denial of a written request for a copy of a "public" record shall be made in writing, within 10 business days of receipt of such request.

(e) Any person aggrieved by a decision to deny or to grant a request for access to a "public" record may request that the Chancellor review that decision.

(f) Fees for copies of "public" records may be assessed in accordance with the maximums established in State statute.

(g) Whenever any "public" record contains personally identifiable information, the release of which would constitute an unwarranted invasion of privacy or violate State or federal law, the "public" record shall be made available with such identifying detail deleted unless release without these details would still constitute an unwarranted invasion of privacy or violate a State or federal law. A statement indicating that identifying details have been deleted or disguised shall accompany the release of such data.

(h) Except as required by statute or directive of the Board of Higher Education, or the Chancellor, requests for information shall not require that the DHE create records by compiling selected items from already available "public" records. In addition, new records are not required to be created, in response to a request, with such information as ratios, proportions, percentages, per capita, frequency distributions, trends, correlations, comparisons or other descriptive or analytic statistics.

**(a)****STUDENT ASSISTANCE BOARD****Student Assistance Programs****Residency****Proposed Amendment: N.J.A.C. 9:7-2.2**

Authorized By: Student Assistance Board, Joseph Streit,  
Chairman.

Authority: N.J.S.A. 18A:71-26.5, 18A:71-26.8, 18A:71-47(a) and  
18A:71-48.

Proposal Number: PRN 1986-116.

The agency proposal follows:

**Summary**

The proposed amendment would allow dependent students, whose parents or guardian relocate to another state, to retain their financial aid eligibility while attending an institution of higher education in New Jersey so long as they continue to reside in New Jersey during the course of each academic year.

**Social Impact**

The proposed amendment encourages students to complete their collegiate education in New Jersey by allowing dependent students to maintain their award eligibility under the programs administered by the Student Assistance Board provided they continue to reside in New Jersey while attending an institution of higher education in New Jersey despite the fact that their parents or guardian have moved out of state. This proposed amendment is also consistent with the regulations of the Board of Higher Education and permits New Jersey colleges to use the same definition in their determination of a student's eligibility for New Jersey resident tuition status and state student assistance programs.

**Economic Impact**

The proposed amendment has minimal economic impact upon the funding of the Tuition Aid Grant and Scholarship Programs since relatively few students are affected by this change.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

**9:7-2.2 Residency**

(a) Students must be legal residents of New Jersey for a period of not less than 12 consecutive months immediately prior to receiving a grant. The residence of a student is defined in terms of domicile. Domicile is defined as the place where a person has his or her true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he or she has the intention of returning.

1. A dependent student as defined in [section 6 of this subchapter] N.J.A.C. 9:7-2.6 is presumed to be a legal resident of the State which his or her parent(s) or guardian(s) is a resident. A dependent student whose parent(s) or guardian(s) is not a legal resident of New Jersey is presumed to be in the State for the temporary purpose of obtaining an education. **However, any dependent student who is eligible for New Jersey resident tuition status, regardless of the residency status of his or her parent(s) or guardian(s), is considered to be a New Jersey resident for State-funded student aid programs.**

(b) Residence established solely for the purpose of attending a particular college cannot be considered as fulfilling the definition of domicile. When in question, a student must demonstrate proof of residence by presenting the following documents: driver's license, voter registration form, tax return(s), or other suitable proof. [the] **The Office of Student Assistance, Department of Higher Education shall determine the State of residence for any individual whose residency is not certain. Institutions may provide information to substantiate the student's claim of legal New Jersey residence.**

**(b)****EDUCATIONAL OPPORTUNITY FUND BOARD****Program Support****Proposed Amendments: N.J.A.C. 9:12-1.5 and 2.3**

Authorized By: Educational Opportunity Fund Board, T.  
Edward Hollander, Chairman.

Authority: N.J.S.A. 18A:71-33 through 18A:71-36.

Proposal Number: PRN 1986-118.

The agency proposal follows:

**Summary**

The Educational Opportunity Fund Board is statutorily charged with establishing policies and procedures governing the operation of and program support for the Educational Opportunity Fund (EOF).

The regulations governing the EOF program were previously noticed for public comment with significant revisions in the September 16, 1985 Register at 17 N.J.R. 2214(a). Those regulations were adopted by the EOF Board, without change at 18 N.J.R. 682(c) (April 7, 1986) with the exception of N.J.A.C. 9:12-1.5 and 9:12-2.3 which comprise the subject of this proposal. As a result of the first proposal, the Board received several comments from the public and colleges. This current proposal reflects amendments made to the two sections which make up this proposal which were not adopted as part of the original proposal. The amendments to these remaining two sections are based upon the above-mentioned comments.

**Social Impact**

The effect of the proposed amendment to N.J.A.C. 9:12-1.5 will be to ensure greater institutional support for campus EOF programs. The change in language from the permissive "should" to the mandatory "shall" will provide greater resources and funding to be placed into non-direct cost expenses for an institution to meet its matching funding requirements. Indirect expenses shall be limited to 10 percent of the total program cost in meeting the match requirement, thereby ensuring more campus funding for other services and personnel. This provision should benefit students within each campus program by making more funding available for services to students.

The proposed amendment to N.J.A.C. 9:12-2.3 benefits EOF program students who are in academic programs where adherence to a strict sequence and progression of courses is required. Falling out of sequence can set a student back a year because courses are generally sequential in nature and are not offered every semester. By providing priority funding to such students for summer programs, those students will be more able to stay in sequence and thus complete their education without delay.

**Economic Impact**

The proposed amendment to N.J.A.C. 9:12-1.5 will prohibit institutions from exceeding 10 percent of their total program cost in meeting their matching funding requirements through the use of indirect expenses. As indirect expenses would generally be present whether or not the program existed, this limitation could require additional institutional funding of EOF campus programs to meet match requirements through various direct expenses.

The proposed amendment to N.J.A.C. 9:12-2.3 has no economic impact but merely adds a further priority category for the funding of EOF students in summer programs.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions shown in brackets [thus]).

**[9:12-1.4]9:12-1.5 Institutional commitment**

(a) Institutions which participate in the EOF program shall provide a broad range of supportive services to students enrolled in the program. Institutions shall provide funding equivalent to no less than 50 percent of the proposed total cost of each program to be supported by EOF grant funds[.] **in the following manner:**

1. With regard to matching funds, it is expected that high level institutional officers who are required to serve all students will normally not be included as part of the institutional match. In cases where these individuals are included, a detailed justification must accompany the proposal. The justification should include services provided to the EOF students which would not normally accrue to the student as a result of his or her tuition payment. Generally, personnel who provide direct services to students will be allowed, but must meet the above criteria for institutional match.

2. Indirect expenses [may] shall not exceed 10 percent of the total program cost in meeting the match (for example, space, light, heat, etc.).  
(b) (No change.)

9:12-2.3 Student eligibility

(a) Any student deemed eligible for admission and matriculation to the EOF program by the institution in the academic year (pursuant to N.J.A.C. 9:11-1 et seq.) is qualified to receive additional grant funds to support enrollment and full participation in the summer program in accordance with the following provisions:

[1. All students who will enter college for the first time shall be encouraged to attend the summer program, prior to fall enrollment.]

**1. Summer or pre-freshman attendance should be mandatory for all entering students. Institutions may permit entering students to enroll without attending the summer program, but shall provide alternative activities for such students consistent with criteria listed in N.J.A.C. 9:12-2.2 of the Summer Program Regulations, during the academic year. Such program offerings must be described in the annual funding proposal.**

2. Depending on the availability of funds, renewal students may be permitted to attend summer programs [for remediation or revision needed in their academic program] for a maximum of two summers after initial enrollment.

**3. Priority for funding should be given to those students who:**

- i. Need to complete basic skills requirements;**
- ii. Must meet academic progress regulations;**
- iii. Are able to graduate by the end of the summer session; and**
- iv. Need to stay in academic sequence.**

[3.]4. Student enrolled in highly technical and/or pre-professional programs (pre-law, pre-med) shall be eligible for three summer school programs to increase preparation for post-graduate placement.

[4.]5. Special exceptions for students with unique problems may be granted upon written request by the campus EOF Director and [review] approval by the Executive Director.

## HUMAN SERVICES

The following proposals are authorized by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.

### (a)

#### DIVISION OF MENTAL HEALTH AND HOSPITALS

#### Interim Assistance Procedures Manual

#### Proposed Readoption with Amendments: N.J.A.C. 10:38

Authority: N.J.S.A. 30:4-107.

Proposal Number: PRN 1986-138.

Submit comments by May 21, 1986 to:

Robert Immordino  
Assistant Director for Fiscal and Management Operations  
Division of Mental Health and Hospitals  
CN 700  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

The Interim Assistance Program was developed by the New Jersey Department of Human Services in conjunction with the United States Department of Health and Human Services to permit a client in a State Psychiatric Hospital who is clinically ready for discharge to receive financial assistance for living expenses while his/her application for Supplementary Security Income (SSI) is being processed. Prior to the program, clients who were ready for discharge and would eventually receive SSI benefits would have to remain in the hospital while the application was being processed.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:38 would expire on May 28, 1986. Staff from the Division of Mental Health and Hospitals' Office of Community Services and Office of Fiscal and Management Operations reviewed the Interim Assistance Program and determined it is effectively meeting the objectives it was designed to accomplish.

A summary of the text of N.J.A.C. 10:38 follows:

N.J.A.C. 10:38-1—**Introduction**—describes the program, its authority, and its purpose.

N.J.A.C. 10:38-2—**Definitions**—explains the key terms.

N.J.A.C. 10:38-3—**Interim Assistance Eligibility**—provides criteria by which clients are determined to be eligible or ineligible for the program.

N.J.A.C. 10:38-4—**Interim Assistance Case Processing**—allocates organizational responsibility.

N.J.A.C. 10:38-5—**Trial Placement Status**—describes the criteria and process for a special type of placement.

N.J.A.C. 10:38-6—**Interim Assistance Payment Procedures**—outlines the procedures for authorizing and terminating payments.

N.J.A.C. 10:38-7—**Medicaid Coverage for Interim Assistance Clients**—describes the interaction between the Medicaid and Interim Assistance programs.

N.J.A.C. 10:38-8—**Appeal Procedures**—describes the various processes for seeking review of decision-making.

N.J.A.C. 10:38-9—**Client Income and Resource Monitoring**—outlines the procedures and responsibilities for monitoring client's income and resources.

The proposed amendments to N.J.A.C. 10:38 are not substantial but update the manual to reflect the current organizational responsibilities.

#### Social Impact

Fundamental, clinical and legal principles require that clients be discharged from hospitals as soon as clinically appropriate. Some clients lack the finances to return to the community until they receive SSI benefits and it can take a substantial period of time between application for and receipt of those benefits. The Interim Assistance Program is presently providing assistance to approximately 190 clients per month. Without the Interim Assistance Program, clients would remain in the hospital longer than necessary and resumption of community life would be inappropriately delayed.

#### Economic Impact

Discharge from State Psychiatric Hospitals when clinically appropriate reduces costs since hospitalization is the most expensive location for treatment. In addition, provision is made for the client to reimburse the program from retroactive SSI benefits thus recouping approximately 70 percent of the program's costs.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:38.

Full text of the proposed amendments to the readoption follows (additions indicating boldface **thus**; deletions indicated by brackets [thus]).

10:38-4.4 The Bureau of Transitional Services

(a) The Bureau of Transitional Services will play a major role in several areas, specifically:

1. [Receive and process referrals for Interim Assistance;] **Receive and process referrals for community placement and financial assistance;**

2. [Render eligibility decisions for Interim Assistance;] **Render eligibility decisions for Interim Assistance based on information received from the Social Security Administration;**

3.-8. (No change.)

(b) (No change.)

(c) The Bureau of Transitional Services will, within five working days of receipt of a referral:

1. [Provide the client with a description of the Interim Assistance Program, its requirements, and the client's rights and obligations under the program, if assigned client placement responsibility;] **Submit an initial query to the Social Security Administration to assist in determining clients eligibility for Interim Assistance;**

2. Obtain the client's signature, if he/she expresses an interest in the program, on an Interim Assistance Statement and on form MH-30, if assigned client placement responsibility;]

[3.] 2. Obtain from hospital social service staff form SSA-787, Medical Officer's Statement;

[4.] 3. Make an assessment of the client's potential Supplemental Security Income eligibility based on available documents and information. This evaluation will result in one of the following decisions:

i.-ii. (No change.)

(d) The Bureau of Transitional Services will, for a client assessed as eligible for Interim Assistance:

1.-10. (No change.)

11. [Provide follow-up visits, for a period of up to six months, to ensure that Personal Needs Allowance and maintenance payments are being received and properly utilized;] **Keep the case active for as long as the**

client remains on Interim Assistance to ensure that Personal Needs Allowance and maintenance payments are being received and properly utilized. 12.-14. (No change.)

10:38-5.4 Trial placement status processing

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

(c) The Bureau of Transitional Services will:

1. [Meet with the client within five working days of referral and provide him/her with an explanation of trial placement status and the requirements of the Interim Assistance Program:] Follow procedures outlined under sections 10:38-4.4(b) through (e);

2. [Follow the procedures outlined under sections 10:38-4.4(b) through (e);] Meet with the client within five working days after Interim Assistance eligibility has been determined and provide him/her with an explanation of trial placement status and the requirements of the Interim Assistance Program.

3.-4. (No change.)

## **DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

For proposals numbered PRN 1986-111, 139 and 140, submit comments by May 21, 1986 to:

Henry W. Hardy, Esq.

Administrative Practice Officer

Division of Medical Assistance and Health Services

CN 712

Trenton, New Jersey 08625

### **(a)**

#### **Administration Manual and Several Provider Manuals**

#### **Medically Needy Program**

#### **Proposed Amendments:**

**Administration Manual: N.J.A.C. 10:49 Foreword, 1.1, 1.2, 1.4**

**Transportation Services Manual: N.J.A.C. 10:50-1.5, 2.3**

**Pharmacy Manual: N.J.A.C. 10:51-1.2, 1.14, 3.1**

**Manual for Hospital Services: N.J.A.C. 10:52-1.2, 1.3, 1.6, 1.8, 1.19**

**Manual for Special Hospital Services: N.J.A.C.**

**10:53-1.2, 1.3, 1.5, 1.7, 1.15**

**Manual for Physician's Services: N.J.A.C.**

**10:54-1.2, 1.4, 1.7, 1.9, 1.10**

**Prosthetic and Orthotic Services Manual: N.J.A.C.**

**10:55-2.2**

**Manual for Dental Services: N.J.A.C. 10:56-1.12, 2.1**

**Podiatry Services Manual: N.J.A.C. 10:57-1.3, 1.7, 1.13, 2.3**

**Medical Supplier Manual: N.J.A.C. 10:59-2.3**

**Independent Laboratory Services: N.J.A.C. 10:61-2.2**

**Vision Care Manual: N.J.A.C. 10:62-1.4, 3.3**

**Long Term Care Services Manual: N.J.A.C. 10:63-1.16, 2.1**

**Medical Day Care Manual: N.J.A.C. 10:65-1.2, 2.5**

**Independent Clinic Services: N.J.A.C. 10:66-1.6**

**Manual for Psychological Services: N.J.A.C. 10:67-2.3**

**Manual for Chiropractic Services: N.J.A.C.**

**10:68-1.2**

Authority: N.J.S.A. 30:4D-3i(8), 6g, 7, a, b, c; 1902(a)(10) of the Social Security Act; 42 CFR 435 Subpart D.

Proposal Number: PRN 1986-139.

The agency proposal follows:

#### **Summary**

The proposal concerns recent amendments (P.L. 1985, c.371, approved November 25, 1985 and amended by P.L. 1985, c.510, approved January 21, 1986) to the New Jersey Medicaid Legislation establishing additional coverage under Title XIX (Medicaid) for persons whose income and/or resources may exceed the categorical level and who may require assistance in paying for medical care and services. The program is known as "Medically Needy," and will take effect July 1, 1986. This proposal amends the Division of Medical Assistance and Health Services' (the Division) Administration Manual (N.J.A.C. 10:49-1) and other provider manuals to indicate the individuals who may be eligible for Medically Needy, the three main coverage groups, the means by which providers can identify these individuals, and the services that are covered. It should be noted that certain services are not available to each coverage group.

N.J.A.C. 10:49-1.1 and 1.2 are being amended to indicate those person(s) who will qualify for Medically Needy and the means of identifying them. N.J.A.C. 10:49-1.4, entitled "Services Covered by the New Jersey Medicaid Program," is being deleted and replaced. The services provided to person(s) eligible for categorical assistance are listed in subsection (a), with any service limitations pertaining to the Medically Needy program listed in subsection (b).

The three coverage groups are as follows: pregnant women; needy children under the age of 21; the aged, blind or disabled (the term "aged" means individuals who are 65 years of age and older).

The twenty-one county welfare agencies and/or boards of social services will determine eligibility for both the prospective and retroactive period. Medically Needy applicants/recipients must reapply for benefits every six months. Eligibility may be established for the first day of that (six month) period for individuals who meet the applicable resource and income levels. For those individuals who meet resource levels, but have income above the established eligibility level, they may obtain eligibility through the "spend-down" process. The "spend-down" process enables individuals to apply incurred medical expenses to offset income above the Medically Needy income level; for these individuals, eligibility begins on the day during the (six month) period that the "spend-down" is met. Individuals declared eligible will be issued a Medicaid Eligibility Identification Card (MEI card) (FD-73/178). The MEI card will contain the individual(s)' HSP (Medicaid) case number with the third and fourth digits designating the Medically Needy coverage group. These numerical designations are:

15—Aged related to Medically Needy

25—Disabled related to Medically Needy

35—AFDC (Aid to Families with Dependent Children) related to Medically Needy

55—Blind related to Medically Needy

In addition, there will be a "service code" next to each name on the card. These service codes are:

Group A—Pregnant women

Group B—Needy children

Group C—Aged, Blind or Disabled

While most of the services covered by Medicaid are available to all three coverage groups, some are available to only one or two groups. For example, pharmaceutical services are available to pregnant women and needy children (Groups A and B), but are not to the aged, blind or disabled (Group C).

Providers must verify current eligibility by reviewing the patient's MEI card each time a service is rendered. In addition, providers must be certain that the services they render are included in the appropriate coverage group. Providers should refer to the service codes listed on the card for each patient being treated. If a particular Medicaid service currently requires prior authorization, then this requirement will also apply to Medically Needy individuals. Providers will follow the existing procedures for obtaining prior authorization. Providers are to follow the existing procedures for claims submittal. Claims must be submitted to the appropriate Division fiscal agents (Prudential Insurance Company and Blue Cross/Blue Shield of New Jersey) within the prescribed time frames.

This proposal does provide for one exception with regard to "special" claims. If an individual must "spend down" to establish eligibility, i.e., use incurred medical expenses to offset income above the Medically Needy income level, eligibility begins the day the spend-down is met. However, the Medicaid program may pay for Medically Needy covered services rendered between the first month in which spend-down is met and the day eligibility is established, which are defined as "special" claims. The county welfare agencies and/or boards of social services will

identify "special" claims and provide an authorization document (FD-311). Providers must submit hard copy claims with this authorization document attached.

The services available under the Medically Needy program for the three coverage groups are as follows:

**Group A—Pregnant Women:**

Inpatient hospital services; physician, psychological, independent clinic, optometric, podiatric, dental, chiropractic services; medical day care, home health care, personal care assistant services; optical appliances, prosthetics and orthotics, medical supplies and equipment, laboratory and X-ray services; and pharmaceutical services.

**Group B—Needy Children:**

Physician, psychological, independent clinic, optometric, and dental services; home health care and personal care assistant services; optical appliances; prosthetic and orthotics, medical supplies and equipment, laboratory and X-ray services; and pharmaceutical services.

**Group C—Aged, Blind or Disabled:**

Physician, psychological, independent clinic, optometric, podiatric, and dental services; home health care, personal care assistant and medical day care services; optical appliances; prosthetic and orthotics, medical supplies and equipment; and laboratory and X-ray services.

In some instances, a provider who is treating a recipient of the Medically Needy program may order, prescribe, or refer his/her patient for additional care, treatment or diagnostic studies that are not covered by Medically Needy. For example, physicians' services are available to all three coverage groups listed above. However, outpatient hospital services are not available to any of the coverage groups. Therefore, the physician's services would be covered by the Medically Needy program but services by the hospital outpatient department will not be covered.

Transportation services are available to all three coverage groups. However, transportation provided by a hospital will be covered only for pregnant women (Group A).

Some provider manuals have been amended to indicate any limits in coverage that pertain to that particular service. These manuals include the Pharmacy Manual, Manual for Hospital and Special Hospitals, Medical Day Care Manual, and Independent Clinic Services Manual.

Other manuals were amended to indicate that long term care services, EPSDT (Early Periodic Screening Diagnosis and Treatment) services, and hospital outpatient services are not covered under the Medically Needy program.

The billing subchapters of several manuals were amended to remind providers to check validation forms which are issued monthly, except for individuals under the jurisdiction of the Division of Youth and Family Services, who are issued quarterly validation cards.

In summation, this proposal identifies those services that are available under the Medically Needy program to the respective coverage groups.

**Social Impact**

The rule impacts on New Jersey residents whose income and/or resources are in excess of the categorical assistance standards but below the limits established for Medically Needy or whose medical bills allow them to spend-down to the Medically Needy limits. Persons who are found eligible under the Medically Needy standards are entitled to have the specified covered services reimbursed by the New Jersey Medicaid Program.

The rule impacts on virtually all health care providers in New Jersey. Providers who render services to Medicaid patients must comply with all program requirements.

The Prudential Insurance Company and Blue Cross/Blue Shield of New Jersey, will continue to be responsible for claim processing.

The twenty-one county welfare agencies and/or boards of social services will be responsible for determining eligibility both prospectively and retroactively.

Since both recipients and providers are entitled to hearings, there may be an increase in the number of contested cases sent to the Office of Administrative Law.

**Economic Impact**

The estimated cost of the Medically Needy program for State Fiscal Year 1987 is approximately 85 million dollars (federal-state share combined).

There is no cost to the Medicaid patient for services provided by the Medically Needy program. However, in order to be declared eligible for Medically Needy, some individuals will have to meet "spend-down" requirements.

There is no change in provider reimbursement associated with this proposal.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated by brackets [thus]).

CHAPTER 49  
ADMINISTRATION  
FOREWORD

The New Jersey Medical Assistance and Health Services Act (chapter 413, Laws of 1968) established a program of assistance and services for defined groups of persons to enable them to secure quality medical care. This program, commonly known as "Medicaid" or "Title XIX", will be referred to as the New Jersey Medicaid Program or the program.

The New Jersey Medicaid Program is administered by the Division of Medical Assistance and Health Services through its Central Office and through [local medical assistance units] **Medicaid district offices** located throughout the State of New Jersey.

Reimbursement for services provided under the program is accomplished [by third-party payments,] in conformity with Title XIX regulations. Payments are obtained through the Division's Bureau of Claims and Accounts or through either of its two [contractors] **Fiscal Agents**, [Hospital Service Plan of New Jersey (Blue Cross)] **Blue Cross/Blue Shield of New Jersey, Inc.** and **The Prudential Insurance Company of America**, depending upon the type of service being reimbursed.

**Each New Jersey Medicaid manual consists of two chapters, each chapter divided into smaller subchapters. The first chapter concerns general administrative policies of the New Jersey Medicaid Program. The second chapter is specific to the type of service provided; for example, physician services, hospital services, etc.** This manual is designed for use by a provider who is billing for services furnished under the program. It contains informational and procedural material needed to assist the provider to understand the rules and regulations of participation in the program and to insure prompt and efficient payment of claims. The procedures described in this manual [have been] **were** developed to achieve the goals of the program with due consideration **both** to the needs of the covered persons, and [to promote] **promotion of** effective relationships with providers.

This manual [has been] **was** written in accordance with Federal and State laws, rules and regulations and with the intent to assure that such laws, rules and regulations are uniformly applied.

As a supplement to this manual, a newsletter system is utilized for the prompt dissemination of information concerning policy clarification and/or changes to the New Jersey Medicaid Program. Additionally, manual page revisions are updated as administrative changes occur. Periodically, therefore, revised sections, entire pages and entire chapters [will be] **are** issued accordingly. It is recommended that these newsletters, manual page revisions, and so forth, be filed with your manual at the time of receipt of such documents.

10:49-1.1 Who is eligible for Medicaid

(a) [Medical and health services will be available to the following general groups. The groups are not all inclusive:] **Individuals eligible for Medicaid are divided into those eligible for all services under the New Jersey Medicaid Program (see (b) below) and those individuals (Medically Needy) eligible for only certain services (see (c) below).**

**(b) The following groups are eligible for medical and health services covered under the New Jersey Medicaid Program when provided in conjunction with program requirements specifically outlined in the second chapter of each service manual. The groups are not all inclusive:**

1. (No change.)

2. A person[s] who qualify[ies] under the Supplemental Security Income (SSI) Program as an "ineligible spouse" of an SSI recipient as determined by the Social Security Administration;

3. Persons who are eligible to receive financial assistance as determined by the county welfare agency. Such persons are:

i. Families with dependent children including children 18 [through] to **21 years of age;**

ii.-iii. (No change.)

4.-6. (No change.)

7. Certain persons in State and county psychiatric hospitals and/or State schools for [mental retardation] **the developmentally disabled** as determined eligible by the Department of Human Services;

8. (No change.)

**(c) Medically Needy individuals are eligible for medical and health services covered under the New Jersey Medicaid Program with limitations as listed in N.J.A.C. 10:49-1.4. The services must be provided in conjunction with program requirements specifically outlined in the second chapter of each service manual.**

1. Individuals are determined Medically Needy by the county welfare agency. They must meet the categorical eligibility requirements, have income and/or resources in excess of the categorical standards, and may have insufficient funds to meet their medical expenses. Medically Needy individuals must be in one of the following groups:

- i. Pregnant women,
- ii. Needy children (under 21 years of age),
- iii. The aged (65 years of age or older), the blind or the disabled.

2. There are special income and resource levels established for the Medically Needy. If an individual meets one of the above categories, and has income and/or resources above categorical program levels but less than or equal to the Medically Needy income and resource levels, he/she is eligible as Medically Needy. However, if an individual meets one of the above categories and meets the Medically Needy resource level, eligibility may be established through the "spend-down" process. "Spend-down" is the process whereby an individual may apply incurred medical expenses to offset income above the Medically Needy income level, and thereby adjust their income to meet the Medically Needy income limit. Medically Needy eligibility for all groups including the aged, blind and disabled will be determined by the county welfare agency or the board of social services for both the retroactive and prospective period.

3. Medically Needy applicants/recipients must reapply for benefits every six months. Eligibility may be established the first day of that six-month period or on any date during the six-month period that spend-down is met.

i. Eligibility should be verified by providers on each visit by reviewing the "Medicaid Eligibility Identification Card" (FD-73/178) (See N.J.A.C. 10:49-1.2(b)2.). For those cards issued for the month within the six month period in which the spend-down is met, the card will reflect the date that eligibility begins after the spend-down is met.

4. Claims for Medically Needy covered services provided during an eligible period may be submitted to the program for reimbursement using standard Medicaid procedures. Services provided prior to the effective date of eligibility are the client's liability, except for certain "special" claims.

i. "Special" claims are claims for Medically Needy covered services that were not used to meet the spend-down and were rendered between the first of the month in which eligibility is established and the date of eligibility that appears on the "Medicaid Eligibility Identification Card."

ii. The county welfare agency or board of social services will identify "special" claims which may be reimbursed under the program and will provide an authorization document (FD-311). Such claims must be submitted hard copy with the FD-311 attached.

[(b)] (d) **Newborn:** Although both the mother and newborn infant may be eligible recipients on the date of delivery, the newborn infant is not immediately assigned a Person Number. In order to expedite payment to the practitioner[s] and the hospital[s] for inpatient hospital services rendered to a newborn[s] during the mother's confinement, allowance has been made to reimburse providers using the mother's Health Services Program (Medicaid) Case Number and [patient] Person Number. When the mother is discharged from the hospital, services to the newborn may no longer be claimed by the practitioner and/or hospital under the mother's Person Number. The mother must contact the county welfare agency or board of social services to obtain a Person Number for the newborn. It is the duty of the practitioner or the hospital to contact the county welfare agency to obtain the newborn's Person Number for billing purposes.

[(c)] (e) If a patient has not applied for benefits, is unable to pay for services rendered and appears to meet the requirements for eligibility for the New Jersey Medicaid Program, the provider should encourage the patient or his/her representative to apply for benefits through the county welfare agency or board of social services for either the Aid to Families with Dependent Children program or for the Medically Needy program, [or] to the Social Security Administration[,] for Supplemental Security Income Benefits, or in certain cases to the New Jersey Division of Youth and Family Services. The agency [which] will process the application and notify the patient of the resulting determination.

1. A patient receiving services prior to the notification of eligibility should be informed that he/she is considered responsible for all charges incurred until proof of eligibility is verified. Once eligibility is verified, the provider may not bill the patient for any portion of the costs of allowable services rendered on or after the effective date of eligibility.

[(d)] (f) **Medicaid Retroactive Eligibility:** Persons applying for Medicaid benefits will be asked if they have unpaid medical bills incurred within the three month period immediately prior to the month of application for Medicaid. Except for Medically Needy Applicants, persons indicating that they do have such bills may complete an "Application for Retroactive Medicaid Eligibility" (FD-74) and forward the appli-

cation with all outstanding unpaid bills to the Medicaid Retroactive Eligibility Unit. An application for retroactive eligibility may be obtained by the applicant or his/her authorized agent from the county welfare agency, the Medicaid district office, the Social Security Administration district office or the Retroactive Eligibility Unit[, Medicaid Central Office, Trenton (address on application)] (Division of Medical Assistance and Health Services, CN 712-10, Trenton, New Jersey 08625). The application must be submitted within six months from the date of application for public assistance.

1. (No change.)

2. For Medically Needy persons, retroactive eligibility determinations will be completed by the county welfare agency or board of social services (see (c)4. above).

[(e)] (g) It is in the best interest of the provider to review on each visit [monthly] the eligibility of patients receiving continuing services. It is especially important to review the validation form on each visit when an extended plan of treatment has been authorized. There is no reimbursement for services performed after termination of eligibility other than by exceptional circumstances.

10:49-1.2 How to identify a covered person

All eligible persons as described below have an HSP (Medicaid) Case Number, which includes a two-digit individual Person Number. This identification number appears on the validation of eligibility form which must be presented to providers of services as proof of eligibility.

(a) An HSP (Medicaid) Case Number, as currently assigned, consists of twelve digits.

1. (No change.)

2. For an individual in a State or county institution, the first two digits of the HSP (Medicaid) Case Number reflect the institution where the individual resides.

i. State and county institutions:

- 09—Meadowview Hospital
- 31—Greystone Park Psychiatric Hospital
- 32—Senator Garrett W. Hagedorn Center for Geriatrics (in this instance the use of a 600,000 series number for digits 5 through 10 must also be used to identify the institution)
- 32—Trenton Psychiatric Hospital
- 33—Marlboro Psychiatric Hospital
- 34—Ancora Psychiatric Hospital/Ancora Developmental Center
- 35—North Princeton Developmental Center
- 36—Arthur Brisbane Child Development Center
- 37—Bergen Pines County Hospital
- 38—Essex County Psychiatric Geriatric Center
- 39—Camden County Psychiatric Hospital
- 41—Vineland Developmental Center
- 42—North Jersey Developmental Center
- 43—Greenbrook Regional Center
- 44—Woodbine Developmental Center
- 45—New Lisbon Developmental Center
- 46—E.R. Johnstone [Training and Research Center] Developmental Center
- 47—Woodbridge Developmental Center
- 48—Hunterdon Developmental Center
- 90—Community/Special Residential Services (Family Care)

3. The third and fourth digits of the 12-digit HSP (Medicaid) Case Number designate the category under which a person is determined eligible for the New Jersey Medicaid Program.

10—[Aid to the Aged] Aged-SSI related (65 years of age or older)

15—Aged-Medically Needy related

20—[Aid to the] Disabled-SSI related (under 65 years of age)

25—Disabled-Medically Needy related

30—Aid to Families with Dependent Children (AFDC)

35—AFDC-Medically Needy related

50—[Aid to the] Blind-SSI related

55—Blind-Medically Needy related

60—Children in Foster Care

70—Medical Assistance for Aged—A New Jersey State Program

80—Refugee Program

4.-6. (No change.)

(b) There are four forms used for validation of eligibility: A New Jersey Medicaid provider may verify the client's Medicaid eligibility by means of the Department of Human Services "Medicaid-ID" (FD-152), "Medicaid Eligibility Identification Card" (FD-73/178), "DYFS 16-36", or "Validation of Eligibility" (FD-34).

1. (No change.)

2. "Medicaid Eligibility Identification Card" (MEI Card) (FD-73/178) (see Exhibit II for the regular Medicaid Program MEI Card and Exhibit V for the Medically Needy Program MEI Card at the end of this section): This card is issued monthly or quarterly depending on the basis of the recipient's eligibility. The [FD-73/178] MEI Card is issued monthly to individuals (aged, blind and disabled) determined by the Social Security Administration to be eligible for Supplemental Security Income (SSI), [and] monthly to individuals in the Special Status Program (See [subparagraph] v. below) and monthly to individuals determined by the county welfare agency or board of social services to be eligible in the Medically Needy Program (see vi. below). It is issued quarterly for Medicaid-eligible children under the supervision of the Division of Youth and Family Services (DYFS).

i. The ["Medicaid Eligibility Identification Card" (FD-73/178)] MEI Card usually identifies eligibility for only one person[.]; however, the Special Status Program identifies all eligible persons in the family and restrictions apply to all eligible persons listed on the MEI Card when issued as a Medicaid Special Status Card. Also, when the MEI Card is issued to the Medically Needy, more than one eligible person may be listed and a service code is indicated next to each name (see vi. below), [which identifies all eligible persons in the family]

ii. The [FD-73/178] MEI Card is valid only when signed by the eligible person or his/her representative payee/legal guardian.

iii. The [FD-73/178] MEI Card includes an address, date of birth, Social Security Account Number and the availability of any third-party health insurance. However for the Medically Needy Program, the date of birth and Social Security Account Number are omitted and "Medically Needy" is printed in this space. If the Medicaid client has health insurance, the name of the other insurer will be printed together with a corresponding policy number. Additionally, the type of Medicare coverage (Part A, Part B or Part A and B) and the HIC (Medicare) Number will be included for all Medicare/Medicaid eligibles.

iv. The [FD-73/178] MEI Card will also indicate the cardholder's enrollment in any special programs (HMO, Medicaid Personal Physician Plan, Community Care Program for the [Aged] Elderly and Disabled, and Special Status Program). (For information about these special programs see newsletters at the end of this Subchapter: For HMO-Newsletter #P-390/BC-279, dated June 1, 1984; for Medicaid Personal Physician Plan-Newsletter #P-362/BC-260, dated July 15, 1983; for Community Care Program for the [Aged] Elderly and Disabled-Newsletter #P-371/BC-266 dated December 5, 1983.)

v. The "Special Status Program" restricts the Medicaid client to a single provider of pharmaceutical services. It is issued to clients determined by New Jersey Medicaid to have misused, abused or overused their Medicaid benefits. The name and address of the pharmacy to which the client is restricted will be printed on the top of the ["Medicaid Eligibility Identification Card"] MEI Card. A recipient is permitted to change the designated provider every three months or sooner upon demonstration of good cause and may request a hearing if such a change is denied or unduly delayed or if the recipient otherwise objects to being included in the "Special Status Program". In an effort to discourage misuse or card lending in certain instances, a message will be printed on the card alerting the provider to ask the Medicaid client for additional identification.

vi. When the MEI Card is issued to recipients in the Medically Needy Program, the following message will be printed on the top of the card: "Medically Needy Eligible, Check Provider Manual for Authorized Services". It is important for the provider to always review the eligibility dates and to be aware that eligibility is not always established for an entire month. Also, a provider should always review the "service code" for each Medically Needy recipient. The service code will enable the provider to determine which services are available to each Medically Needy individual (see N.J.A.C. 10:49-1.4 for service exceptions). The service codes for the three groups under Medically Needy are:

- (1) Group A—Pregnant women,
  - (2) Group B—Needy children,
  - (3) Group C—Aged, blind and disabled.
3. (No change.)

4. "Validation of Eligibility" (FD-34) (See Exhibit III at the end of this section): This validation form identifies an individual who resides in a State or county institution.

i.-iii. (No change.)

iv. The Medicaid Program has designated specific Medicaid district offices (see Appendix A for list of MDO's) to handle the prior authorization requests for services for patients/residents from each institution and the family care residents who are under the jurisdiction of

the Division of [Mental Retardation] Developmental Disabilities. If the patient/resident's HSP (Medicaid) Case Number begins with any of the following numbers, contact the Medicaid district office (MDO) indicated.

- (1)-(12) (No change.)
- Exhibits I-IV (No change.)

Exhibit V

MEDICAID ELIGIBILITY IDENTIFICATION CARD

State of New Jersey  
Department of  
Human Services  
Division of  
Medical Assistance  
and  
Health Services  
Additional Health Insurance\*  
ELIGIBLE PERSONS PN Service Code

MEDICALLY NEEDED ELIGIBLE  
CHECK PROVIDER MANUAL  
FOR AUTHORIZED SERVICES

HSP (Medicaid) Case No.    Person No.  
Valid From    To  
MEDICALLY NEEDED  
Soc. Sec. Acct. No.    Date of Birth  
Name  
Street Address  
City, State    Zip Code  
Use this card when you  
need medical services  
.....  
Recipient's Signature

FC-73/178  
(Rev. 10/83)

**IMPORTANT NOTICE: You must sign the front of this card on the line above the Recipient's Signature. If you are unable to sign the card, the individual representing you must sign your name, initial the card and explain his/her relationship to you.**

**Immediately notify the Medicaid District Office or the Division of Youth and Family Services case manager or the County Welfare Agency (as appropriate):**

- 1. If you have Medicare Coverage or other health insurance not listed or incorrectly listed; or
- 2. If any changes are necessary to the front of this card; or
- 3. If you have any questions regarding the use of this card; or
- 4. If this card is lost or stolen. (Unless the report of the loss or theft can be documented as the appropriate agency, you may be liable to repay Medicaid for any benefits obtained through its unauthorized use.)

**FEDERAL and STATE LAW make it a crime and set the punishment for persons who have been found guilty of making any false statement or representation of a material fact to receive any benefit or payment under the Medicaid Program. The Department of Human Services is required to make you aware of this law and to warn you against making any false statement in an application or in a fact used in determining the right to a benefit, or converting a benefit to the use of any person other than one for whom it was intended.**

**THIS CARD IS NON-TRANSFERABLE UNDER PENALTY OF LAW**

**NOTICE TO PROVIDERS:**

The printed name which appears directly above the line for Recipient's Signature on this card is the MEDICAID eligible person. This name identifies that person ONLY (except AFDC can include spouse/child(ren) listed with PERSON NUMBERS) as being eligible for MEDICAID benefits within the time period shown.

If the name of a "REPRESENTATIVE PAYEE" appears on this card, that individual is not eligible for Medicaid benefits.

\*Ask the cardholder if there is Medicare coverage or other health insurance not listed. Please indicate this information in the appropriate area on the claim form. You are to bill MEDICAID only AFTER receiving denial or partial payment from the other insurance company.

Delete the current text of 10:49-1.4 "Authorized services for covered persons" in its entirety and add the following:

**10:49-1.4 Services covered by the New Jersey Medicaid Program**

(a) New Jersey Medicaid individuals are eligible for covered services when the services are provided in conjunction with program requirements specifically outlined in the second chapter of each service manual; however, for Medically Needy individuals some Medicaid services are not available or are only available to certain eligible Medically Needy groups (see (b) below).

Any limitations imposed will be consistent with the medical necessity of the patient's condition as determined by the attending physician or other practitioner and in accordance with standards generally recognized by health professionals and promulgated through the New Jersey Medicaid Program. The covered services listed below in alphabetical order are available to the regular Medicaid population:

1. Chiropractic services;
2. Christian Science Sanatoria care and services (See Hospital Services Manual);
3. Clinic services, including Mental Health, Family Planning and Dental Services (independent outpatient health care facilities other than hospital);
4. Dental services;
5. Early and Periodic Screening, Diagnosis and Treatment for individuals under age 21 (EPSDT): A periodic preventative health care program for persons under age 21 designed for early detection, diagnosis and treatment of correctable abnormalities. This program supplements the general medical services otherwise available.
6. Family Planning services;
7. Hearing Aid services;
8. Home Care services (Home Health Care and Personal Care Assistant services);
9. Hospital services—Inpatient
  - i. Acute Care Hospitals.
  - ii. In institutions for mental diseases: Limited to persons age 65 or older and children 21 years of age and under.
10. Hospital services—Outpatient;
11. Laboratory (clinical) and Radiological services;
12. Long-Term Care services (Nursing Home-Skilled Nursing Facility, Intermediate Care Facility and Intermediate Care Facility for the Mentally Retarded);
13. Medical Day Care services;
14. Medical Supplies and Equipment;
15. Mental Health services;
16. Nurse-midwifery services;
17. Optometric services;
18. Pharmaceutical services;
19. Physician's services (M.D. and D.O.);
20. Podiatric services;
21. Prosthetic and Orthotic Devices;
22. Rehabilitative services (Payments are made to eligible Medicaid providers only. No payment is made to privately practicing therapists.);
  - i. Physical therapy, as provided by a home health agency, independent clinic, long term care facility, or hospital outpatient department or in a physicians office.
  - ii. Occupational therapy, as provided by a home health agency, independent clinic, long term care facility, or hospital outpatient department.
  - iii. Speech-Language Pathology services, as provided by a home health agency, independent clinic, long term care facility, or hospital outpatient department.
  - iv. Audiology services provided in the office of a licensed specialist in otology or otolaryngology, or as part of an independent clinic or hospital outpatient services.
23. Transportation services which include ambulance and invalid coach service, or other transportation through the County Welfare Agency, when such service is not free and available in the community, and when use of any other method of transportation is medically contraindicated.
  - (b) Regular Medicaid services are available to Medically Needy individuals except for the following services which are not available or are only available to certain eligible Medically Needy groups (See the service code next to the individual's name on the Medicaid Eligibility Identification Card to ascertain the Medically Needy group under which the individual's eligibility was established; i.e. Group A—pregnant women, Group B—needy children, and Group C—aged, blind and disabled.);
    1. Chiropractic services are available only to pregnant women (Group A).
    2. EPSDT services are not available to any Medically Needy group.
    3. Hospital services (inpatient) are available only to pregnant women (Group A).
    4. Hospital services (outpatient) are not available to any Medically Needy group.
    5. Long-term care services are not available to any Medically Needy group.
    6. Medical day care services are available only to pregnant women, the aged, blind and the disabled (Groups A and C).
    7. Pharmaceutical services are available only to pregnant women and needy children (Groups A and B).

8. Podiatric services are available only to pregnant women, the aged, the blind and the disabled (Groups A and C).

9. Rehabilitative services are not available for reimbursement when provided through a hospital or long-term care facility, except to pregnant women as part of their inpatient hospital services.

#### 10:50 TRANSPORTATION SERVICES MANUAL

##### 10:50-1.5 Basis of Payment

(a)-(f) (No change.)

(g) If the patient is admitted to the hospital, the ambulance charges are billed as part of the inpatient hospital service. If a patient is not admitted, (see (j) below) the ambulance charge is billed as a hospital outpatient service. **For recipients in the Medically Needy Program, ambulance charges are not available for reimbursement when provided through a hospital, except to pregnant women as part of their inpatient hospital services. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2).**

(h)-(j) (No change.)

##### 10:50-2.3 Patient identification

Verify that the patient is a Medicaid-eligible person at the time of each trip. Eligibility is verified by reviewing the patient validation form which is issued [on the first day of each month for AFDC-eligible individuals and quarterly for SSI eligibles] **monthly. Individuals under the jurisdiction of the Division of Youth and Family Services (DYFS) are issued quarterly validation cards.** It is especially important to review a patient's validation form on each trip when extended plans of treatment have been authorized. Prior authorization is no guarantee that an individual is covered.

#### 10:51 PHARMACY MANUAL

##### 10:51-1.2 Covered pharmaceutical services

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

(c) **For recipients in the Medically Needy Program, pharmaceutical services are only available to pregnant women and dependent children. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)**

##### 10:51-1.14 Services not eligible for reimbursement

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

(c) **For recipients in the Medically Needy Program, pharmaceutical services are not available to the aged, the blind or the disabled. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)**

##### 10:51-3.1 Introduction

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

(c) **For recipients in the Medically Needy Program, pharmaceutical services are only available to pregnant women and needy children. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)**

#### 10:52 MANUAL FOR HOSPITAL SERVICES

##### 10:52-1.2 Covered inpatient hospital services

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

(c) **For recipients in the Medically Needy Program, inpatient hospital services are only available to pregnant women. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)**

##### 10:52-1.3 Noncovered inpatient hospital services

(a) (No change.)

(b) **For recipients in the Medically Needy Program, inpatient hospital services are not available except to pregnant women. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)**

##### 10:52-1.6 Outpatient hospital services

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

(d) **For recipients in the Medically Needy Program, outpatient hospital services are not available.**

##### 10:52-1.8 Noncovered outpatient hospital services

(a) Approved hospital outpatient department will not be reimbursed for any of the following:

1.-8. (No change.)

9. **Services to recipients eligible under the Medically Needy Program.**

##### 10:52-1.19 Medical Day Care Centers (Hospital Affiliated)

(a) Medical Day Care as defined in N.J.A.C. 10:65-1.4 is a covered service when provided by a hospital affiliated facility. The Medical Day Care Center must provide the following basic services: nursing, medical, social, dietary, rehabilitation, transportation, recreation and personal care. Medical Day Care is not considered part of the Diagnosis Related Groups (DRG) experimental system for reimbursement purposes.

1.-3. (No change.)

**4. For recipients in the Medically Needy Program, medical day care services are only available to pregnant women, the aged, the blind and the disabled. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)**

10:53 MANUAL FOR SPECIAL HOSPITAL SERVICES

10:53-1.2 Covered inpatient hospital services

(a) (No change.)

**(b) For recipients in the Medically Needy Program, inpatient hospital services are only available to pregnant women. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)**

10:53-1.3 Noncovered inpatient special hospital services

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

**(c) For recipients in the Medically Needy Program, inpatient hospital services are not available except to pregnant women. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)**

10:53-1.5 Outpatient hospital services; general provisions

(a) (No change.)

**(b) For recipients in the Medically Needy Program, outpatient hospital services are not available.**

10:53-1.7 Noncovered outpatient special hospital services

(a) Approved hospital outpatient departments will not be reimbursed for any of the following:

1.-9. (No change.)

**10. Services to recipients eligible under the Medically Needy Program.**

10:53-1.15 Medical Day Care Centers (Hospital Affiliated)

(a) "Medical Day Care" as defined in N.J.A.C. 10:54-1.4 is a covered service when provided by a hospital affiliated facility. The Medical Day Care Center must provide the following basic services: nursing, medical, social, dietary, rehabilitation, transportation, recreation and personal care. Medical Day Care is not considered part of the Diagnosis Related Groups (DRG) experimental system for reimbursement purposes.

1.-3. (No change.)

**4. For recipients in the Medically Needy Program, medical day care services are only available to pregnant women, and the aged, the blind and the disabled. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)**

(b) (No change.)

10:54 MANUAL FOR PHYSICIAN'S SERVICES

10:54-1.4 Policies related to inpatient care

(a) (No change.)

**(b) The New Jersey Medicaid Program recognized as a covered service medically necessary inpatient services which are provided in an approved private psychiatric hospital or psychiatric section of an approved general hospital with the following limitations (see 10:49-1.4(b) for the Medically Needy Program):**

1.-5. (No change.)

(c) (No change.)

10:54-1.7 Physical medicine and rehabilitative services

(a) This section is concerned with rehabilitation services which includes physical therapy, occupational therapy, speech therapy, and other restorative services provided for the purpose of attaining maximum reduction of physical or mental disability and restoration of the patient to his best possible functional level. It does not include restorative/nursing procedures or physical therapy which is purely palliative, such as, the application of heat per se, in any form, massage, routine calisthenics or group exercises, assistance in any activity or use of a simple mechanical device not requiring the special skill of a qualified physical therapist. Rehabilitation services shall be made available to covered persons as an integral part of a comprehensive medical program. (See 10:49-1.4(b) for the Medically Needy Program.) Such services include not only intermittent or part-time service to the patient, but also instructions to responsible members of the family in follow-up procedures necessary for the care of the patient.

(b)-(g) (No change.)

10:54-1.9 Policy on shoes

(a) (No change.)

**(b) In the New Jersey Medicaid Program, orthopedic shoes are reimbursable under the following conditions (See 10:49-1.4(b) for the Medically Needy Program):**

1.-3. (No change.)

10:54-1.10 Prescription policies

(a) This section is intended to describe the physician's responsibility in writing of prescriptions in order to maintain the traditional patient-

prescriber-provider relationship and to insure the recipient free choice of provider. Physicians are urged to familiarize themselves with all aspects of this section in order to effect economics consistent with good medical practices and to facilitate prompt payment to the provider. (See 10:49-1.4(b) for the Medically Needy Program service limitations.)

1.-3. (No change.)

(b)-(i) (No change.)

10:55 PROSTHETIC AND ORTHOTIC SERVICES MANUAL

10:55-2.2 Patient identification

It should be verified that the patient is a covered person on the first visit and each visit thereafter. This is done by viewing the patient's validation form which is issued [on the first day of each month] monthly. **Individuals under the jurisdiction of the Division of Youth and Family Services (DYFS) are issued quarterly validation cards.** It is especially important to review a patient's validation form on each visit when extended plans of treatment have been authorized. Prior authorization is no guarantee that an individual is covered.

10:56 MANUAL FOR DENTAL SERVICES

10:56-1.12 Place of service

(a) In addition to the private office, dental services may be provided in the home, a hospital, approved independent clinic, long-term care facility, and elsewhere. **However, for recipients in the Medically Needy Program, hospital services and long-term care services are not available except inpatient hospital services to pregnant women. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)**

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

10:56-2.1 Patient eligibility

(a) (No change.)

(b) Since eligibility is usually on a monthly basis [(SSI eligibility is on a three month basis)] and most dental treatment other than diagnostic and/or emergency procedures will usually extend for a longer period, it is possible that a patient could become ineligible during the course of treatment.

(c) (No change.)

10:57 PODIATRY SERVICES MANUAL

10:57-1.3 Scope of services

Podiatry care under the health services program is allowable to covered persons in such services are essential. Essential podiatry care includes those services which require the professional knowledge and skill of a licensed podiatrist. **For recipients in the Medically Needy Program, podiatry care is only available to pregnant women, and the aged, the blind or disabled. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)**

10:57-1.7 Hospital clinic services

All services rendered in the hospital clinic setting are considered hospital costs, including practitioners' services. **For recipients in the Medically Needy Program, hospital services are not available except to pregnant women as part of their inpatient hospital services.**

10:57-1.13 Prescription policies

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

**(c) For recipients in the Medically Needy Program, Medicaid services are available with limitations (see 10:49-1.4(b)).**

10:57-2.3 Patient identification

Verify that the patient is a covered person on the first visit and each visit thereafter. This is done by viewing the patient's validation form which is issued [the first day of each month] monthly. **Individuals under the jurisdiction of the Division of Youth and Family Services (DYFS) are issued quarterly validation cards.** It is especially important to review a patient's validation form on each visit when extended plans of treatment have been authorized. Prior authorization is no guarantee that an individual is covered. Authorization becomes invalid upon termination of eligibility.

10:59 MEDICAL SUPPLIER MANUAL

10:59-2.3 Patient identification

Verify that the patient is a covered person on the first visit and each visit thereafter, by viewing the patient's validation form which is issued monthly. [ , except for Supplemental Security Income (SSI), which is issued quarterly (see N.J.A.C. 10:49-1.2). To identify eligibles from State Institutions, see N.J.A.C. 10:59-1.] **Individuals under the jurisdiction of the Division of Youth and Family Services (DYFS) are issued quarterly validation cards.** It is especially important to review a patient's validation form prior to billing when rentals have been authorized. Prior authorizations is no guarantee that an individual is covered.

## 10:61 INDEPENDENT LABORATORY SERVICES

## 10:61-2.2 Patient identification

Verification that the patient is a covered person shall be made on the first visit and each visit thereafter. This is done by viewing the patient's validation form which is issued [on the first day of each month] **monthly. Individuals under the jurisdiction of the Division of Youth and Family Services (DYFS) are issued quarterly validation cards.** It is especially important to review a patient's validation form on each visit when extended plans of treatment have been authorized. Prior authorization is no guarantee that an individual is covered.

## 10:62 VISION CARE MANUAL

## 10:62-1.4 Providers of service

(a) Within the restrictions of their respective licensure, the following are eligible providers of eye care:

1.-4. (No change.)

5. Hospitals meeting the definition of "approved hospital" as described in N.J.A.C. 10:52-1.1. **For recipients in the Medically Needy Program, hospital services are not available except to pregnant women as part of their inpatient hospital services. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)**

## 10:62-3.3 Patient identification

(a) (No change.)

(b) This is done by viewing the patient's validation form which is issued [the first day of each month] **monthly. Individuals under the jurisdiction of the Division of Youth and Family Services (DYFS) are issued quarterly validation cards.**

(c)-(e) (No change.)

## 10:63 LONG-TERM CARE SERVICES MANUAL

## 10:63-1.16 Admission policies

(a) **In the Medically Needy Program, long-term care services are not available to Medically Needy recipients.**

Recodify (a)-(i) as (b)-(j) (No change in text.)

## 10:63-2.1 Billing system concept and flow

(a) (No change.)

(b) **In the Medically Needy Program, long-term care services are not available to Medically Needy recipients.**

## 10:65 MEDICAL DAY CARE

## 10:65-1.2 Definitions

...

"Medicaid Eligibility" means in order to obtain Medical Day Care Services, the participant must be determined eligible to receive Medicaid services in the community under the existing programs of Aid to Families with Dependent Children, Supplemental Security Income, [and/or] Medicaid Only **and/or Medically Needy (For recipients in the Medically Needy Program, medical day care services are only available to pregnant women, and the aged, the blind and the disabled). (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)**

...

## 10:65-2.5 Directory of Medicaid District Offices (MDO)

(a) A list of Medicaid District Offices with addresses and telephone numbers can be found at N.J.A.C. 10:49-1 [.24 (a)] **Appendix A.**

1. (No change.)

## 10:66 INDEPENDENT CLINIC SERVICES

## 10:66-1.6 Scope of services

(a) Licensed and approved independent clinics may, to the extent of their specialty, license and/or approved New Jersey Medicaid Provider Agreement, provide the following services (see 1.6(b) through (n)) when medically necessary. Procedure codes and maximum dollar allowance which correspond to allowable services are listed in subchapter 3 (N.J.A.C. 10:66-3).

**1. Independent clinic services are available to Medically Needy individuals except for certain services listed in N.J.A.C. 10:49-1.4(b) which are not available or are only available to certain eligible Medically Needy groups.**

**2. For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2**

(b) Examination and treatment rules are as follows.

1.-2. (No change.)

3. As a condition of continued participation in the New Jersey Medicaid Program, all licensed ambulatory care facilities providing primary care to adults and children, but provide, EPSDT service **for persons in the regular Medicaid program.**

**i. EPSDT services are not available to recipients in the Medically Needy Program.**

4. See N.J.A.C. 10:66-3 for procedure codes and reimbursement schedule.

(c)-(e) (No change.)

(f) Medical day care rules are as follows.

1.-2. (No change.)

**3. For recipients in the Medically Needy Program, medical day care services are only available to pregnant women, and the aged, blind and the disabled. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)**

(g)-(i) (No change.)

(j) Podiatry services rules are as follows.

1. Medically necessary podiatry services may be reimbursed when performed by a licensed podiatrist in an independent clinic, which is specifically approved to perform such services by the New Jersey Medicaid Program.

**i. For recipients in the Medically Needy program, podiatric care is only available to pregnant women, and the aged, blind or disabled,**

**ii. For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2.**

2. (No change.)

(k) (No change.)

(l) Rehabilitation services include physical therapy, occupational therapy, speech therapy and other restorative services provided for the purpose of attaining maximum reduction of physical or mental[ly] disability and restoration of the patient to his best functional level. It does not include physical therapy which is purely palliative, such as the application of heat per se, in any form; massage, routine calisthenics or group exercises; assistance in any activity; use of a simple mechanical device; or other services not requiring the special skill of a qualified physical therapist. Rehabilitation services shall be made available to eligible recipients as an integral part of a comprehensive medical program.

**1. For recipients in the Medically Needy Program, rehabilitative services are not available when provided through a hospital or long-term care facility, except to pregnant women as part of their inpatient hospital services.**

Recodify 1.-6. as 2.-7. (No change in text.)

(m) (No change.)

(n) Other services rules are as follows.

1.-4. (No change.)

5. (No change.)

i.-iii. (No change.)

[6.] iv. (No change in text.)

[i.] v. (No change in text.)

[ii.] vi. (No change in text.)

## 10:67 MANUAL FOR PSYCHOLOGICAL SERVICES

## 10:67-2.3 Patient identification

Verify that the patient is a covered person on the first visit and each visit thereafter. This is done by viewing the patient's validation form which is issued [the first day of each month] **monthly. Individuals under the jurisdiction of the Division of Youth and Family Services (DYFS) are issued quarterly validation cards.** It is especially important to review a patient's validation form on each visit when extended plans of treatment have been authorized. Prior authorization is no guarantee that an individual is covered. Authorization becomes invalid upon termination of eligibility.

## 10:68 MANUAL FOR CHIROPRACTIC SERVICES

## 10:68-1.2 Scope of services available to recipients

(a) Payment will be made for the necessary services ordered by a chiropractor subject to the following limitations **(For recipients in the Medically Needy Program, chiropractic services are only available to pregnant women. For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2):**

1.-4. (No change.)

(b)-(f) (No change.)

(a)

**Chiropractic Manual  
Chiropractor Billing Procedures**

**Proposed Readoption: N.J.A.C. 10:68-2.1, 2.3, 2.4,  
2.8**

**Proposed Readoption with Amendments: N.J.A.C.  
10:68-2.2, 2.5, 2.6, 2.7**

Authority: N.J.S.A. 30:4D-6b(a), 7, 7a, 7b.

Proposal Number: PRN 1986-111.

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:68-2, entitled Chiropractor Billing Procedures, expires on July 9, 1986. This proposal is designed to readopt the Billing Procedures Subchapter of the Manual for Chiropractic Services. The rule describes the billing procedures which are used by chiropractors when submitting a claim for services to the New Jersey Medicaid Program.

Chiropractic services are those services which are limited to manual manipulation of the spine and provided personally by the chiropractor, who must be licensed by the New Jersey State Board of Medical Examiners. Chiropractors practicing in states other than New Jersey are not eligible to participate in the New Jersey Medicaid Program.

The current text of the rule indicates that claims are submitted on the HCFA-1500 claim form. This amendment was effective on July 9, 1981 as R.1981 d.249. Sections 2.5 and 2.7 are being amended to indicate that the claim form is now labeled 1500 N.J. Ed. 11-82. The rule also informs chiropractors to check the patient's validation stub when services are rendered to insure current eligibility, to obtain prior authorization when appropriate, and to submit claims promptly.

The current text of Section 2.2 indicates that chiropractors must submit claims within 90 days from date of service. This section is being amended to refer the reader to a central source, N.J.A.C. 10:49-1.12. However, there is no change in the filing requirement. Follow-up inquiries must be made within 180 days. The list of Medicaid District Offices (MDOs) in Section 2.6 is being amended to refer the reader to N.J.A.C. 10:49-1, Appendix A, which is the current list of MDOs. The first two digits and their respective counties is being retained.

An administrative review has been conducted and a determination made that the rule should be continued because it is necessary, adequate, reasonable, efficient, understandable and responsive for the purpose for which it was intended. The rule instructs chiropractors on the method of billing in order to obtain reimbursement.

**Social Impact**

The rule applies to all Medicaid patients who need chiropractic services. The rule also applies to chiropractors who need to know the proper method of submitting a claim when treating a Medicaid patient.

The rule should be continued so Medicaid patients can receive chiropractic services, and the chiropractors can be reimbursed accordingly.

**Economic Impact**

The Division spent approximately \$250,000 (federal-state share combined) in State Fiscal Year 1984 and again in State Fiscal Year 1985 for chiropractic services.

Chiropractors are reimbursed on a fee-for-service basis.

There is no cost to the Medicaid patient.

Full text of the proposed readoption may be found at N.J.A.C. 10:68-2.

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

10:68-2.2 General policy

[Billing should be done on a monthly basis. Claims for payments of services must be received not later than 90 days following the last date of service as indicated on the claim.]

(a) **Claims for payment of services and follow-up inquiries must be made within the time periods for non-institutional providers as specified in N.J.A.C. 10:49-1.12.**

(b) For purposes of this time limitation, a claim is a submission in writing, which indicates a request for reimbursement in connection with medical services of a specified nature furnished to an eligible recipient. If a claim, as defined above, is received within the time limit specified,

the claim is considered to be filed timely, even though additional information is supplied after the time limitations.

10:68-2.5 Combination Medicare/Medicaid claims

Services covered under Medicare rendered by noninstitutional providers to a Medicare/Medicaid eligible person shall be billed on the Health Insurance Claim Form [HCFA-1500] 1500 N.J., and the claims sent directly to the Medicare [intermediary] carrier, Prudential, Medicare B Division, [Post Office Box 6500, Millville,] P.O. Box 6666, Linwood, New Jersey [08332] 08221. The provider must record the medical insurance claim number in item 6 and the [New Jersey Health Services] Health Services Program (HSP) (Medicaid) case and person number in item 8 on the [Form HCFA-1500] claim form.

10:68-2.6 Directory of [Local] Medicaid District Offices (MDO)

(a) The following is a list of [local medical assistance units] Medicaid District Offices, their county of location, and their county(ies) of jurisdiction[, their addresses and telephone numbers]. It should be noted the first two digits of the patient's Health Services Program case number indicates which MDO has jurisdiction in processing prior authorization requests. **The complete address and telephone number of each MDO appears at N.J.A.C. 10:49-1, Appendix A.**

Ist Two Digits of HSP Case	County
01	Atlantic
02	Bergen
03	Burlington
04	Camden
05	Cape May
06	Cumberland
07	Essex
08	Gloucester
09	Hudson
10	Hunterdon
11	Mercer
12	Middlesex
13	Monmouth
14	Morris
15	Ocean
16	Passaic
17	Salem
18	Somerset
19	Sussex
20	Union
21	Warren

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

10:68-2.7 Health Insurance Claim Form [HCFA-1500] 1500-N.J.

(a) This form is used for the purpose of billing for covered services of physicians, podiatrists, optometrists, psychologists, and chiropractors. [Billing should be done on a monthly basis and submitted for payment as soon after the end of the month as is possible. (See N.J.A.C. 10:49-1.12.)]

(b) Mail the original copy (contractor's copy) together with authorization form (when appropriate) to:

The Prudential Insurance Company of America  
**Data Base Systems Division**  
P.O. Box [1900] 471  
Millville, New Jersey 08332

NOTE: Forms were included with the text of the adopted rules above but are not reproduced herein. Information concerning these forms may be obtained by contacting the Division of Medical Assistance and Health Services, [324 East State Street,] CN 712, Trenton, New Jersey 08625.

10:68-2.8 Automated data exchange

(a) (No change.)

(b) Requests for approval must be submitted to the appropriate contractor:

The Prudential Insurance Co.  
**Data Base Systems Division**  
P.O. Box 471  
Millville, New Jersey 08332  
or  
Blue Cross of New Jersey  
33 Washington Street  
Newark, New Jersey 07102

(c)-(d) (No change.)

**LABOR****DIVISION OF UNEMPLOYMENT AND TEMPORARY  
DISABILITY BENEFITS**

The following proposals are authorized by Charles Serraino, Commissioner, Department of Labor.

**(a)****Registration for Work and Claims for Benefits****Proposed Amendment: N.J.A.C. 12:17-2.1**

Authority: N.J.S.A. 43:21-4, 43:21-6.

Proposal Number: PRN 1986-114.

Submit comments by May 21, 1986 to:

Frederick C. Kniesler, Assistant Commissioner  
Income Security  
Labor Building, Room 602  
John Fitch Plaza  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendment to N.J.A.C. 12:17-2.1 clarifies reporting requirement guidelines for unemployment insurance claimants. This amendment provides that an individual who fails to report without good cause on the designated date will be ineligible for benefits from the date the individual failed to report until the date the individual actually reports to the claims office. If the individual fails to report in person or in writing within 14 days of the designated reporting day, benefits will be denied for the compensable weeks being claimed and until the date the claimant actually reports.

**Social Impact**

Under the current rule there has been some confusion as to an individual's eligibility for benefits in situations involving failure to report as directed by the local claims office. This rule provides for a more equitable and clearer reporting requirement guideline for unemployment insurance claimants.

**Economic Impact**

The adoption of the proposed amendment would have little or no economic impact since its purpose is to codify the Division's policy with respect to reporting requirements under the Unemployment Compensation Law.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

12:17-2.1 Claims and registration for individuals generally

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

(c) The claimant shall report in person to the local unemployment insurance claims office on the date and time designated by a representative of the Division.

[1. The Division, for reasons found to constitute good cause for any individual's failure to report on the date and at the time designated for him to report at the local unemployment insurance claims office, may accept a continued claim from such individual for the week or weeks in question; provided the individual reports in person at the local unemployment insurance claims office within 14 days after his assigned reporting day, or if he is unable to so report, he notifies the local unemployment insurance claims office in writing within such time of the reason for his failure to report on his reporting day.]

**1. A claimant's failure to report to the local unemployment office without good cause on the date designated will result in the loss of unemployment benefit rights from the date the failure to report occurred, to such time as the claimant reports to the local unemployment insurance claims office.**

**2. [Failure] A claimant's failure to report, or notify the local unemployment insurance claims office in writing of the reason for failing to report, within 14 days from the assigned reporting date will result in the loss of benefits for the compensable weeks currently being claimed, until the date [he] the claimant actually reports.**

(d)-(h) (No change.)

**(b)****DIVISION OF WORKPLACE STANDARDS****Safety and Health Standards for Public Employees  
Asbestos Standards for Public Employees****Proposed Amendment: N.J.A.C. 12:100-4.2****Proposed New Rules: N.J.A.C. 12:100-12**

Authority: N.J.S.A. 34:6A-25 et seq., specifically 34:6A-30, 31 and 32.

Proposal Number: PRN 1986-113.

Submit comments by May 21, 1986 to:

William J. Clark, Assistant Commissioner  
Division of Workplace Standards  
New Jersey Department of Labor  
CN 054  
Trenton, NJ 08625-0054

The agency proposal follows:

**Summary**

The New Jersey Public Employees Occupational Safety and Health Act N.J.A.C. 34:6A-25 et seq., was enacted on January 17, 1984, to ensure that all public employees are provided with a safe and healthful workplace free from recognized hazards. Under N.J.S.A. 34:6A-25 et seq., the Department of Labor adopted safety and health standards for public employees at 16 N.J.R. 3051, which included the adoption by reference of the General Industry Standards 29 CFR Part 1910, Construction Standards 29 CFR 1926 and Agriculture Standards 29 CFR Part 1928.

Among the General Industry Standards adopted in N.J.A.C. 12:100-4 was an asbestos standard at 29 CFR Part 1910.1001. The proposed new subchapter, N.J.A.C. 12:100-12, replaces 29 CFR 1910.1001 although its contents are based on that OSHA Asbestos Standard. The proposed new subchapter regulates public employee exposure to asbestos, which is a recognized human carcinogen.

Public employees, including maintenance workers and public works employees, may be exposed to asbestos through direct work with asbestos-containing materials in ceilings, walls, pipes and boilers or in brake and clutch repair. The new subchapter addresses this exposure and contains standards covering work practices, control methods and respiratory protective equipment for asbestos-containing materials in buildings where public employees work.

The subchapter consists of fifteen sections. Sections 1 and 2 cover the scope and definitions of the rule. Section 3 contains the permissible exposure levels which are based on National Institute of Occupational Safety and Health recommended standards. Sections 4, 5 and 6 cover engineering methods and work practices which are required to minimize release of airborne asbestos fibers. Section 7 addresses asbestos abatement work which must be performed according to the Asbestos Hazard Abatement Subcode, N.J.A.C. 5:28-8 of the Uniform Construction Code. Sections 8 and 9 contain the requirements for the use of respiratory protective equipment and personal protective clothing. Section 10 deals with monitoring for asbestos. Section 11 covers the posting of caution signs and labels. Section 12 address disposal of asbestos-containing waste which is regulated by the Department of Environmental Protection. Section 13 contains the standards for employee information and training programs. Section 14 covers medical monitoring. Section 15 addresses recordkeeping.

**Social Impact**

There is no question that occupational exposure to asbestos has resulted in a significant number of deaths due to asbestosis, lung cancer, mesothelioma, and other types of cancer. Implementation of the proposed new rules will significantly reduce the incidence of asbestos related disease and deaths among public workers.

The new rules will effectively reduce the occurrence of suffering and disease among those public employees who may be directly exposed to asbestos. Public employees will be trained, thereby providing the occurrence of asbestos health hazards from improper handling of asbestos-containing building materials, improper remedial work and other work practices. Public employees', as well as the public's, exposure to life-threatening asbestos will be reduced by assuring that asbestos operations are performed by knowledgeable and competent workers in accordance with scientifically accepted work practices.

### Economic Impact

OSHA has analyzed the risk of developing asbestos-related disease not only at their current two fibers per cubic centimeter permissible exposure level but also at all exposure levels which workers may currently face. Reducing exposure levels from two fibers per cubic centimeter to 0.1 fibers per cubic centimeter will result in a 95 percent decrease in asbestos-related cancer mortality, from 6411.6 deaths per 100,000 to 336.1 deaths per 100,000. Application of these rules will not only significantly decrease asbestos-related disease morbidity and mortality but will also result in fewer lost work days, better maintenance of work schedules, increased productivity, decreased medical expenses, decreased worker compensation expenses and decreased liability expenses. Compliance with these rules does impose some expense related to the costs of engineering controls, respiratory protective equipment, personal protective clothing, monitoring and employee training. However, the substantial decrease in asbestos-related disease morbidity and mortality will far outweigh these costs.

**Full text** of the proposed amendment follows (additions indicated in boldface **thus**).

#### 12:100-4.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1910, General Industry Standards, are adopted as occupational safety and health standards for the protection of public employees engaged in general operation and shall include:

1.-17. (No change.)

18. Subpart Z—Toxic and Hazardous Substances.

**i. The standards contained in Subpart Z of 29 CFR Part 1910 are adopted except that the following health standards are not adopted:**

(1) 1910.1001, Asbestos

(2) 1910.1200, Hazard communication.

**Full text** of the proposed new rules follows.

## SUBCHAPTER 12. ASBESTOS

### 12:100-12.1 Scope of subchapter

This subchapter shall apply to all employees and employers as defined in N.J.A.C. 12:100-12.2 who may be directly exposed to asbestos as that term is defined in N.J.A.C. 12:100-12.2.

### 12:100-12.2 Definitions

(a) The following words, terms and abbreviations when used in this subchapter shall have the following meanings unless the context clearly indicates otherwise.

“Accessible” means asbestos-containing material that can be readily touched by hand or a reasonable extension of the hand, or hit by a thrown object, or touched by climbing on a chair.

“Action level” means direct exposure, without regard to the use of respirators, to an airborne concentration of asbestos of 0.05 f/cc averaged over a full-shift.

“ANSI” means the American National Standards Institute.

“Asbestos” means a general term used to describe a group of naturally occurring hydrated mineral silicates. The asbestiform varieties include chrysotile (serpentine), crocidolite (riebeckite); amosite (cummingtonite-grunerite); anthophyllite; tremolite; and actinolite.

“Asbestos-containing material” means any material which contains more than one percent asbestos by weight.

“Asbestos hazards abatement job” means the following:

1. “Large asbestos hazard abatement job” means the removal, enclosure or encapsulation within one year of 160 square feet or more of asbestos-containing material used on an equipment, wall, or ceiling area; or involves the removal or encapsulation, using a liquid material applied by a pressurized spray, within one year of 260 linear feet or more of asbestos-containing material on covered piping.

2. “Minor asbestos hazard abatement job” means corrective action using recommended work practices to minimize the likelihood of fiber release from small damaged areas of asbestos ceilings, pipe and boiler insulation which involves the removal, repair, encapsulation or enclosure of 25 square feet or less of asbestos-containing material used on an equipment, wall or ceiling area; or involves the removal or encapsulation, using a liquid material applied by a pressurized spray, of 10 linear feet or less of asbestos-containing material on covered piping as delineated in N.J.A.C. 5:23-8.4. The repair, enclosure and encapsulation by methods other than pressurized spray of any amount of asbestos-containing material used to cover piping, shall also be a minor asbestos hazard abatement job.

3. “Small asbestos hazard abatement job” means the removal, enclosure, or encapsulation within one year or more than 25 and less than 160 square feet of asbestos-containing material used on an equipment, wall or ceiling area; or involves the removal or encapsulation, using a liquid material applied by a pressurized spray, within one year, of more than 10 and less than 260 linear feet of asbestos-containing material on covered piping.

“Asbestos safety technician” means a person certified by the New Jersey Department of Community Affairs, hired by the asbestos safety control monitor who continuously monitors and inspects the asbestos abatement work.

“CFR” means Code of Federal Regulations in effect on the effective date of this subchapter.

“Decontamination unit” means a serial arrangement of rooms or spaces for the purpose of separating the work site from the building environment upon entering the work site and for the cleaning of employees’ and employers’ equipment, and contained waste prior to returning to the clean environment.

“DCA” means the New Jersey Department of Community Affairs.

“DEP” means the Department of Environmental Protection.

“Direct exposure” means potential exposure to asbestos fibers to employees who perform large, small and minor abatement work, initial cleaning in an area containing damaged friable asbestos, and routine maintenance which may disturb asbestos or cause contact with damaged asbestos containing materials. Direct exposure also means potential exposure to asbestos fibers to employees who use, disturb, repack and handle asbestos or asbestos-containing materials.

“DOH” means the New Jersey Department of Health.

“Employer” means public employer and shall include any person acting directly on behalf of, or with the knowledge and ratification of:

1. The State, or any department, division, bureau, board, council, agency or authority of the State, except any bistate agency; or

2. Any county, municipality, or any department, division, bureau, board, council, agency or authority of any county or municipality, or of any school district or special purposes district created pursuant to law, according to N.J.A.C. 12:100-2.1.

“Employee” means any public employee, any person holding a position by appointment or employment in the service of an “employer” as that term is used in the Act and shall include any individual whose work has ceased as a consequence of, or in connection with, any administrative or judicial action instituted under the Act; provided, however, that elected officials, members of boards and commissions and managerial executives as defined in the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. shall be excluded from the coverage of the Act, according to N.J.A.C. 12:100-2.1.

“Encapsulation” means treatment of asbestos-containing materials, generally ceilings, using a liquid to bond or seal the surface to minimize the potential for fiber release.

“Enclosure” means an impermeable barrier made of wood, metal, or other material and placed around asbestos-containing material.

“EPA” means the U.S. Environmental Protection Agency.

“f/cc” means fibers per cubic centimeter of air.

“Fibers” means fibers longer than five microns (um) with a length-to-width aspect ratio of 3:1 or greater.

“Friable” means any material applied to ceilings, walls, piping, duct work, etc., which when dry may be crumbled, pulverized, or reduced to a powder by moderate hand pressure.

“HEPA” means a high efficiency particulate absolute fiber, which is 99.97 percent efficient for 0.3 microns.

“High efficiency filter respirator” means a filter approved by NIOSH for dust, fumes and mists having a time-weighted average, that is, permissible exposure limit, less than 0.05 milligrams per cubic meter.

“Negative pressure” means air pressure lower than surrounding areas, generally caused by exhausting air from a sealed space or work area.

“NIOSH” means the National Institute for Occupational Safety and Health of the U.S. Department of Health and Human Services.

“OSHA” means the Occupational Safety and Health Administration of the U.S. Department of Labor.

“PCM” means phase contrast microscopy, commonly 450 magnification.

“PLM” means polarized light microscopy, commonly 100 magnification.

“Primarily seal/critical barrier” means two layers of six mil polyethylene sheeting that completely seals off the work area to prevent the distribution of fibers to the surrounding area, such as the opening between the top of a wall and the underside of ceiling construction, electrical

outlets, non-removable lights, heating, ventilation and air conditioning systems, window, doorways, entranceways, ducts, grilles, grates, diffusers, wall clocks, speaker grilles, floor drains, sink drains, etc.

"Removal" means taking asbestos materials out of a building and disposing of such materials.

"Repair" means corrective action using recommended work practice to minimize the likelihood of fiber release from small damaged areas of asbestos ceilings, and pipe and boiler insulation. Repair may include but is not limited to: enclosure of pipe and boiler insulation, spot removal and replacement with non-asbestos material, and spot encapsulation of ceiling materials with minor damage.

"TWA" means time-weighted average concentration for an eight-hour work day.

"um" means microns, or micrometers.

"Wet cleaning" means the process of eliminating asbestos contamination from building surfaces and objects by using cloths, mops, or other cleaning utensils which have been dampened with amended water afterwards thoroughly decontaminated or disposed of as asbestos contaminated waste.

"Work area" means the area where asbestos related work or removal operations are performed which is defined and isolated to prevent the spread of asbestos dust, fiber or debris, and entry by unauthorized personnel.

#### 12:100-12.3 Permissible exposure levels

(a) The eight-hour, time-weighted average airborne concentrations of asbestos fibers to which any employee may be exposed directly shall not exceed 0.1 fibers, longer than five micrometers, per cubic centimeter of air (0.1 f/cc) as determined by N.J.A.C. 12:100-12.10.

(b) No employee shall be exposed directly at any time to airborne concentrations of asbestos fibers in excess of 0.5 fibers, longer than five micrometers per cubic centimeter of air (0.5 f/cc) based on a 30 minute sampling period as determined by N.J.A.C. 12:100-12.10.

(c) When an employee is directly exposed to asbestos, the control methods of N.J.A.C. 12:100-12.4, through N.J.A.C. 12:100-12 shall be utilized.

#### 12:100-12.4 Engineering methods of compliance

(a) Engineering controls, such as, but not limited to, isolation, enclosure, local exhaust ventilation and dust collection, shall be used to meet compliance with the permissible exposure limits.

(b) Local exhaust systems and dust collection systems utilizing high efficiency particulate absolute filters shall be designed, constructed, installed, and maintained in accordance with ANSI Z9.2-1979, Design and Operation of Local Exhaust Systems.

(c) All hand-operated and power-operated tools which may produce or release airborne fibers, such as, but not limited to, saws, scorers, abrasive wheels, and drills, shall be provided with local exhaust systems.

(b) Wherever possible, non-asbestos containing materials shall be substituted for asbestos containing materials, such as, but limited to, non-asbestos cements, plasters, brake and clutch pads and linings, valve packing, lagging, rope, welding shields, gaskets, fireproof clothing and gloves.

#### 12:100-12.5 General work practices for compliance

(a) Asbestos shall be handled, mixed, applied, removed, cut, scored, or otherwise worked in a wet state sufficient to prevent the emission of airborne fibers.

(b) All external surfaces in any place of employment shall be maintained free of asbestos fibers using wet cleaning methods or a HEPA vacuum or both. Under no circumstances shall any cleaning be done by dry sweeping, dusting, blowing off dust with compressed air or vacuuming with a non HEPA-equipped machine.

(c) In buildings where damaged, friable asbestos is being initially cleaned, the employer shall ensure that the following procedures are taken:

1. All carpets through the building shall be vacuumed with a High Efficiency Particulate Air (HEPA)-filtered vacuum cleaner and clean all non-carpeted floors with wet mops. Vacuum cleaner bags shall be sprayed with water before removal and discarded pursuant to N.J.A.C. 12:100-12.12. Vacuum filters and mopheads shall also be discarded pursuant to N.J.A.C. 12:100-12.12.

2. In areas where the vacuum cleaner filter is changed, the area shall be isolated and personal protective equipment shall be worn by employees performing the task.

3. All curtains and books in areas where there is damaged, friable asbestos shall be vacuumed with a HEPA-vacuum. Vacuum bags and filters shall be discarded pursuant to N.J.A.C. 12:100-12.12. All shelves and other horizontal surfaces in areas where there is damaged, friable

asbestos shall be wiped with damp cloths. A mist spray bottle shall be used to keep cloths damp. Clothes shall be discarded in sealed plastic bags.

(d) In areas where direct exposure to asbestos may result, the employer shall comply with the following practices.

1. The storage or consumption of food, beverages, smoking materials, tobacco products or other products for chewing shall be prohibited.

2. Where employees wear protective clothing and equipment, centralized clean change rooms shall be provided in accordance with 29 CFR 1910.141(e) for the number of such employees required to change clothes.

3. Where employees are required to wash, washing facilities shall be provided in accordance with 29 CFR 1910.141(d)(1) and (2)(ii) through (vii).

4. Where employees are required to shower, shower facilities shall be provided in accordance with 29 CFR 1910.141(d)(3).

5. If a lunchroom is provided it shall be located in an area complying with 29 CFR 1910.141(g)(2).

(e) New materials containing asbestos cement, mortar, coating, grout, plaster, or similar material containing asbestos shall not be removed from bags, cartons, or other containers in which they are shipped, without being either wetted, or enclosed, or ventilated so as to effectively prevent the release of airborne asbestos fibers.

(f) Areas of direct exposure to asbestos shall be isolated from the surrounding environment to prevent contamination of these areas and exposure of unprotected employees. The conditions present in each area shall be evaluated to develop a proper enclosure. Methods may include, but are not limited to, sealing with six mil thick polyethylene sheeting, establishing negative pressure in the area, establishing continuous local exhaust ventilation so that air movement is always from ordinary work areas towards the asbestos operation, establishing boundaries and barricades, or performing work outside of normal school or work hours.

1. Entry shall be restricted to employees whose duties require them to be in the areas and who have been specifically assigned by the employer.

2. Any material, equipment, tools or other item to be taken or removed from such areas shall be first decontaminated by HEPA vacuuming or wet wiping.

3. Prior to commencing direct work with asbestos such areas shall be posted in accordance with N.J.A.C. 12:100-12.11.

#### 12:100-12.6 Specific work practices for compliance: brakes; clutch plates and furnaces

(a) Employers shall ensure that employees performing work on brakes and clutch plates containing asbestos are trained in accordance with N.J.A.C. 12:100-12.13.

1. All work on brakes and clutch plates shall be done using an enclosed system which includes a HEPA vacuum attached to a box or cylinder which fits over the brake or clutch assembly.

2. The enclosed system shall have a two hand rubber glove system to assure isolation and allow drum removal inside the enclosure, and a negative pressure system that reduces exposure during filter change and attachments for clutch work.

3. Aerosol spray cleaners and brake assembly washing systems shall not be used.

4. Shop vacuums shall not be used for cleaning of asbestos dust.

5. Compressed air shall not be used outside an enclosed system for removing asbestos dust from brake or clutch assemblies.

(b) The employer shall determine whether interior cleaning of a boiler, incinerator or other furnace involves direct exposure to asbestos-containing materials.

1. Where cleaning does involve direct exposure to asbestos, all requirements of this subchapter shall be followed.

#### 12:100-12.7 Asbestos abatement work

(a) The employer shall ensure that all asbestos abatement work, including minor asbestos hazard abatement jobs, small asbestos hazard abatement jobs, large asbestos hazard abatement jobs, encapsulation and enclosure, performed in areas normally occupied by public employees, be performed according to N.J.A.C. 5:23-8.4, 8.10, 8.11, 8.12, 8.13 and 8.14 of the Asbestos Hazard Abatement Subcode of the Uniform Construction Code.

(b) The employer shall obtain a license and the employee shall obtain a permit in accordance with N.J.A.C. 12:120, Asbestos Licenses and Permits, when more than 10 linear feet or more than 25 square feet of asbestos is stripped or removed.

#### 12:100-12.8 Respiratory protective equipment

(a) Respiratory protection shall be worn by any employee who is directly exposed to asbestos without regard to airborne asbestos levels and without regard to the implementation of all engineering and work practice controls, except as provided in 1 below.

1. The Department of Health may grant exemptions to the respirator requirements of this section. To apply for an exemption, an employer shall provide representative personal monitoring data complying with N.J.A.C. 12:100-12.10 or descriptions of all engineering and work practice controls in use or both.

(b) Respirators shall be selected from among particular makes and models approved by the National Institute for Occupational Safety and Health under the provisions of 30 CFR Part 11 from one of the following five types:

1. Self-contained breathing apparatus, pressure-demand open circuit, with full facepiece;

2. Self-contained breathing apparatus, positive-pressure closed circuit, with full facepiece;

3. Pressure demand supplied air respirator, with half-mask or full facepiece, with or without escape provisions;

4. Type "C" continuous flow supplied air respirator, with any tight-fitting facepiece, with or without escape provisions; or

5. Powered air purifying respirator with a high efficiency particulate filter and a tight-fitting facepiece.

(c) Employees shall not be assigned to use a respirator unless it has been determined by a physician that the employees are physically able to perform the work and use the equipment. This evaluation shall be provided at no cost to the employee before first assignment to wear a respirator or periodically while use continues. The physician making the determination shall follow the guidance in ANSI Z88.6—1984, Respiratory Protection—Respirator Use—Physical Qualifications for Personnel.

(d) If based on the medical determination, an employee is unable to wear any appropriate respirator, such employee may be rotated to another job or given the opportunity to transfer to a different position whose duties the employee is able to perform with the same employer, in the same geographical area and with the same seniority, status, and rate of pay he had just prior to such transfer.

(e) Employers utilizing respirators for protection against asbestos shall establish a respiratory protection program in accordance with 29 CFR 1910.134.

(f) Removal of respirators shall take place only after HEPA vacuuming of all garments, shoes and personal protective equipment. The respirator exterior shall be vacuumed, and washed or wet wiped before removal. The instructions and recommendations of the respirator manufacturer shall be followed concerning decontamination, removal, and filter replacement.

#### 12:100-12.9 Personal protective clothing

(a) In large, small and minor asbestos abatement work and in work involving direct exposure to asbestos, the employer shall ensure that each employee complies with the procedures of this section.

(b) Where showering facilities are available:

1. Employees shall be required to shower after asbestos work.

2. Employees shall wear any type of disposable or non-disposable clothing during asbestos work. Employees shall HEPA vacuum and remove all personal protective equipment and clothing before exiting the asbestos work area and either discard the disposable clothing as asbestos-contaminated waste or place the non-disposable clothing in plastic bags for laundering or decontamination by the employer.

3. Employees shall wear disposable shoe coverings during asbestos work. Employees shall HEPA vacuum and remove shoe coverings and HEPA vacuum shoes before exiting the asbestos work area. Employees shall discard coverings as asbestos-contaminated waste. Shoes may be retained in asbestos area for re-use or removed from the area after being HEPA vacuumed.

4. Employees shall shower after decontamination and removal of all personal protective equipment and clothing except the respirator. Employees shall not remove the respirator until they are in the shower and have thoroughly wetted their hair and body and washed the exterior of the respirator. Employees shall also wash other non-disposable personal protective equipment in the shower.

(c) Where showering facilities are not available:

1. Employees shall wear disposable clothing which is approved by the Department of Health and shown to be impenetrable to asbestos relative to other available fabrics. Employees shall wear disposable clothing either over non-disposable clothing or by itself. Disposable clothing shall cover

the whole body and extremities and include gloves, head coverings, and coveralls. Coveralls shall be elastic, taped or otherwise rendered dust-tight at ankles, wrists and neck. Employers shall provide a variety of sizes adequate for employees.

2. Employees shall HEPA vacuum and remove all personal protective equipment and clothing before exiting the asbestos work area. Employees shall discard disposable clothing as asbestos-contaminated waste.

3. Employees shall wear and decontaminate shoe coverings and shoes in accordance with (b)3 above.

4. After exiting, employees shall vacuum, then wash or wet wipe the exterior of the respirator. Employees shall then remove the respirator and wash or wet wipe hands, face and neck.

(d) Personal protective clothing shall be breathable or heat-dissipating where employees work in a high temperature area.

(e) Personal protective clothing shall be fire-retardant where employees are exposed to open flames.

(f) Other protective equipment for eyes, face, head and extremities shall be provided when needed in accordance with 29 CFR 1910.132 and 1210.133.

(g) The laundering of asbestos contaminated clothing and decontamination of personal protective equipment shall be considered direct exposure to asbestos. The laundering of asbestos contaminated clothing shall be done so as to prevent the release of airborne asbestos fibers. Any employer who gives asbestos-contaminated clothing to another person for laundering shall inform such person of the requirement to effectively prevent the release of airborne asbestos fibers. Contaminated clothing shall be transported in sealed impermeable bags, or other closed, impermeable containers, and labeled in accordance with N.J.A.C. 12:100-12.11.

(h) During minor abatement work, maintenance work and other work where no decontamination area is immediately available and where employees must travel through non-asbestos areas between direct exposure to asbestos, the following modifications to (a) through (c) above are permitted:

1. Personal protective equipment shoes and clothing may be worn during such travel provided they are thoroughly HEPA vacuumed first;

2. Respirators shall be HEPA vacuumed, wet wiped or washed, filters capped and placed in a plastic bag before such travel; and

3. Shoe protection and decontamination shall be done in accordance with (b)3 above.

#### 12:100-12.10 Monitoring practices

(a) All sampling and analysis of airborne concentrations of asbestos fibers required by this section shall be made using NIOSH method 7400.

(b) An employee shall be considered exposed if the airborne concentration of asbestos fibers exceeds the permissible exposure limits even though the employee is using a respirator.

(c) The purpose of the required monitoring is to evaluate the effectiveness of engineering controls and work practices in reducing employee exposure below the limits of N.J.A.C. 12:100-12.3 and to trigger corrective action or modifications when necessary.

1. All samples required by this section shall be submitted to a laboratory participating successfully in the National Institute for Occupational Safety and Health Proficiency Analytical Test Program for asbestos. Such laboratory shall also be a State Certified Asbestos Training Laboratory, when such a certification is implemented.

2. The laboratory shall provide the employer with the personal monitoring results for large asbestos abatement jobs within 24 hours of the collection of air samples.

3. The employer shall evaluate the monitoring results and implement the necessary corrective action or modifications within 48 hours of the receipt of personal air monitoring results.

(d) Personal monitoring consisting of a monitoring device on the employee's person, is required for the following situations:

1. During large asbestos hazard abatement jobs such monitoring shall be performed by the on-site Asbestos Safety Technician.

2. During direct exposure to asbestos arising from repetitive tasks where monitoring can appropriately evaluate the effectiveness of engineering controls and work practices in reducing employee exposure below the limits of N.J.A.C. 12:100-12.3 and to trigger corrective action or modifications when necessary. Repetitive tasks are ongoing routine tasks where monitoring results are representative of employee exposure. An example of such repetitive task is the performance of work on brakes and clutches containing asbestos.

(e) Monitoring is not required during one time non-repetitive or unique tasks where monitoring will not appropriately evaluate the effectiveness of engineering controls and work practices.

(f) Monitoring shall include full shift personal samples representative of the employee's regular exposure to asbestos and short term personal samples representative of the employee's peak exposures to asbestos.

(g) At least one employee in each job classification or with distinct job duties shall be monitored.

(h) Within six months of the effective date of this subchapter, employers shall monitor those employees where direct exposure to asbestos arises from repetitive tasks as described in (d)2. above.

1. Employees who perform large asbestos hazard abatement jobs shall be monitored as soon as actual removal, isolation or encapsulation work begins.

2. Monitoring for the initial determination may be limited to a representative sample of the exposed employees who the employer reasonably believes are exposed to the greatest airborne concentrations of asbestos.

3. Measurements of airborne asbestos made in the preceding 12 months may be used to satisfy the requirement to monitor under (h) above if the sampling and analytical methods used meet the requirements of this section.

4. Where an initial determination and initial monitoring conducted under (h) and (h)1. above reveals the possibility of any employee exposure at or above the action level, the employer shall conduct monitoring which is representative of the exposure of each employee who is exposed in the workplace.

i. Measurements of airborne asbestos made in the preceding 12 months may be used to satisfy this requirement if the sampling and analytical methods used meet the requirements of this section.

5. Where an initial determination and initial monitoring conducted under (h) and (h)1. above reveals that no employee is exposed to airborne concentrations of asbestos at or above the action level, the employer shall make a written record of such determination. The record shall include the date of determination, location within the worksite, and the name and social security number of each employee monitored.

6. If the initial monitoring reveals employee exposure to be below the action level, the measurements need not be repeated except as provided in (i) below.

7. If the initial determination or subsequent monitoring reveals employee exposure to be at or above the action level but below the permissible exposure limit, the employer shall repeat monitoring in accordance with this section at least every six months. The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least seven days apart, are below the action level at which time the employer may discontinue monitoring for that employee except as otherwise provided in (i) below.

8. If the initial monitoring reveals that employee exposure is above the permissible exposure limit the employer shall repeat monitoring quarterly. The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least seven days apart, are below the permissible exposure levels but at or above the action level at which time the employer shall repeat monitoring for that employee at the frequency specified in (h)7. above, except as otherwise provided in (i) below.

(i) Whenever there has been a production, process, control or personnel change which may result in new or additional exposure to asbestos or whenever the employer has any other reason to suspect a change which may result in new or additional exposures to asbestos, the monitoring shall be repeated.

1. Employee asbestos exposures resulting from large asbestos hazard abatement jobs can be highly variable with changes in type of asbestos, percentage of asbestos in the material, binding material, amount of material abated, type and number of employees present and room size. Accordingly, repeated monitoring shall be done whenever there is a significant change in any one of these factors.

(j) Within five working days after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represent the exposure of that particular employee.

1. Whenever the results indicate that the representative employee exposure, without regard to respirators, exceeds the permissible exposure limit, the employer shall include in the written notice a statement that the permissible exposure limit was exceeded and a description of the corrective action taken or to be taken to reduce exposure to or below the permissible exposure limit.

12:100-12.11 Caution signs and labels

(a) Caution signs shall be provided and displayed at each area where employees are directly exposed to asbestos. Signs shall be posted at such a distance from a location that an employee may read the signs and take

necessary protective steps before entering the area marked by the signs. Signs shall be posted at all approaches to such areas.

(b) Warning signs shall conform to the 20 inch by 14 inch vertical format signs specified in 29 CFR 1910.145(d)(4). The sign shall display the following legend in the lower panel, with letter sizes and styles of a visibility at least equal to that specified in Table 12.11.

Table 12.11  
Caution Signs and Labels

Legend	Notation
Asbestos	1" Sans Serif, Gothic or Block.
Dust Hazard	3/4" Sans Serif, Gothic or Block.
Avoid Breathing Dust	1/4" Gothic.
Wear Assigned Protective Equipment	1/4" Gothic.
Do Not Remain In Area Unless Your Work Requires It.	1/4" Gothic.
Breathing Asbestos Dust Is Hazardous To Your Health.	14 Point Gothic.

(c) Spacing between lines shall be at least equal to the height of the upper of any two lines.

(d) Caution labels shall be affixed to all raw materials, mixtures, scrap, waste, debris, and other products containing asbestos fibers, or to their containers, in accordance with N.J.A.C. 12:100-12.12.

(e) The caution labels of (d) above shall be printed in letters of sufficient size and contrast to be readily visible and legible. The label shall state:

CAUTION

Contains Asbestos Fibers  
Avoid Creating Dust  
Breathing Asbestos Dust Causes  
Serious Bodily Harm

12:100-12.12 Storage and waste disposal

(a) All asbestos-containing materials which are not in use, other than those in place on ceilings, walls, pipes and boilers, shall be stored in such a way so as to prevent the release of airborne fibers. Storage may include, but is not limited to, impermeable containers of air-tight drums.

(b) Disposal of asbestos waste shall be conducted in accordance with N.J.A.C. 7:26, Solid Waste Regulations.

12:100-12.13 Employee information and training

(a) Each employer in a workplace in which there is a potential exposure to airborne asbestos at any level shall inform employees who are directly exposed and contractors whose employees may be directly exposed of the presence and location of asbestos-containing materials in the workplace and the health impact of the exposure to asbestos.

(b) The employer shall institute a training program for and ensure the participation of all employees who have direct exposure to asbestos. Training shall be specifically designed for asbestos workers, maintenance and custodial workers, mechanics or other job titles which may have direct exposure to asbestos.

(c) All training programs shall be conducted by a firm which is certified by the New Jersey Department of Health pursuant to N.J.A.C. 12:120-6 and 8:60-6. In order to become certified to conduct public employee training, such as maintenance and custodial training, the firm shall first be certified to conduct asbestos worker training in accordance with Subchapters 2 and 6 of N.J.A.C. 12:120 and 8:60, Asbestos Licenses and Permits. An application to conduct specialized training shall then be submitted to the Department of Health for approval. The training courses shall meet all the requirements of N.J.A.C. 12:120-6 and 8:60-6.

(d) The employer shall provide initial training within 180 days from the effective date of this subchapter.

(e) The training shall be repeated at least annually.

(f) Within 60 days of the date of employment, the employer shall provide training to any new employee who will be directly exposed to asbestos.

(g) The training shall include, but not be limited to, information on the following:

1. Health effects of asbestos exposure;
2. Limitations of medical screening;
3. Information on how to evaluate one's own historical and current exposure levels;
4. Synergistic effects between cigarette smoking and asbestos exposure, including the importance of smoking cessation;

5. Scope of State and Federal regulations;
6. Respiratory protection, including types of respirators, fit testing and care of respirators;
7. Other personal protection equipment including clothing; and
8. Specific work practices and use of all equipment pertinent to the job.

(h) The employer shall make available to all employees who smoke a list of resources which provide information on smoking cessation programs.

#### 12:100-12.14 Medical monitoring

(a) Medical monitoring shall be required for all employees whose exposure to asbestos is equal to or greater than 0.2 fibers per cubic centimeter of air averaged over an eight hour day, two to three days per week, on a regular basis. This monitoring shall begin within one year of the determination of the exposure.

(b) Within one year of the effective date of this subchapter, medical monitoring shall be required for all employees with significant historical direct exposure to asbestos. Employers shall consult with the Department of Health and employee representatives in identifying current employees with significant historical direct exposure which is defined as a cumulative exposure of at least 10 fiber/cubic centimeter years of exposure calculated by multiplying average TWA exposure for a year by duration in years.

(c) Medical monitoring shall include: a comprehensive work history, physical examination with special emphasis on the lungs, a posterior-anterior chest x-ray and pulmonary function testing conducted by a NIOSH certified pulmonary function technician. The x-ray shall be interpreted by a NIOSH certified B reader.

(d) The work history, physical examination and pulmonary function test shall be repeated annually for employees who have been and are currently exposed to the exposure levels in (a) above.

(e) The posterior-anterior chest x-ray shall be repeated every five years, for the first fifteen years of exposure as defined in (a) above, then every two years until twenty years of exposure. After twenty years of exposure, chest x-rays shall be taken annually.

(f) Employees identified with parenchymal asbestosis shall receive a medical evaluation and consultation to determine the advisability of their continued exposure to asbestos. If based on this medical determination, an employee is advised to discontinue work which involves direct exposure to asbestos, such employee shall be reassigned to another job or given the opportunity to be reassigned to a position whose duties the employee is able to perform with the same employer, in the same geographical area and with the same seniority, status, and rate of pay of the prior position.

#### 12:100-12.15 Recordkeeping

Retention of and employee access to medical and monitoring data shall be in accordance with 29 CFR 1910.20.

## LAW AND PUBLIC SAFETY

### (a)

#### STATE BOARD OF DENTISTRY

##### General Provisions

##### Announcement of Practice in Special Area of Dentistry; Patient Records

##### Amended Rules: N.J.A.C. 13:30-8.4 and 8.8

Authorized By: Richard J. Van Sciver, D.D.S., President, New Jersey State Board of Dentistry.

Authority: N.J.S.A. 45:6-1 et seq.

Proposal Number: PRN 1986-131.

Submit comments by May 21, 1986 to:

William Gutman, Executive Secretary  
New Jersey State Board of Dentistry  
1100 Raymond Boulevard, Room 321  
Newark, New Jersey 07102

The agency proposal follows:

#### Summary

The State Board of Dentistry is proposing to amend N.J.A.C. 13:30-8.4 concerning the announcement of practice in a special area of dentistry to redesignate the specialty of "pedodontics" to "pediatric dentistry." This change would be in conformance with the change in designation

adopted by the American Dental Association. Under the amendment, "pedodontics" would remain as an acceptable alternate designation for the specialty and the regulation regarding announcement of practice in a special area of dentistry would continue to apply to its use.

The proposed amendment to N.J.A.C. 13:30-8.8(c) would prohibit dentists who treat patients whose dental expenses are paid through Medicaid from charging such patients for copies of their dental records where the dentist discontinues services to the patient prior to completion of treatment. The amendment is made in response to information received from the State Department of Human Services that dentists who previously treated Medicaid patients are refusing to continue treatment and are then refusing to give the patients their dental records unless a fee is paid. Because such patients may not be able to afford the fee, they cannot obtain their records. Without such dental records, a patient's attempt to obtain treatment by another dentist is significantly hampered. Also, where another dentist agrees to continue treatment, such treatment is made more difficult without prior records.

#### Social Impact

The public served by Medicaid will be benefited by the proposed amendment because such patients for whom continued treatment has been refused, who cannot afford to obtain copies of their records and who thus are hampered in their attempts to obtain treatment from other dentists will no longer be required to pay for their records. Thus, finding another dentist to continue treatment and the rendering of such treatment will be facilitated.

#### Economic Impact

As a result of the proposed amendment, dentists who discontinue services to Medicaid patients prior to the completion of treatment will absorb the loss of duplication of the records of such patients. This cost will thus become part of a licensee's overhead expenses and may eventually and indirectly be passed on to his other patients.

Full text of the proposal follows (additions shown in boldface thus; deletions from shown in brackets [thus]).

#### 13:30-8.4 Announcement of practice in a special area of dentistry

(a) (No change.)

(b) The following special areas of dentistry are hereby recognized as suitable for the announcement of limited dental practices:

1. Endodontics;
  2. Oral surgery;
  3. Oral pathology;
  4. Orthodontics;
  5. [Pedodontics;] **Pediatric dentistry (also called Pedodontics);**
  6. Periodontics;
  7. Prosthodontics;
  8. Public health.
- (c)-(m) (No change.)

#### 13:30-8.8 Patient records

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

(c) Upon receipt of the written request of a patient or a patient's legal guardian and within 14 days thereof, legible copies of the patient record including, if requested, duplicates of models and copies of radiographs, shall be furnished to the patient or another designated dentist. A reasonable charge may be made for this service, and the treating dentist may require that all outstanding balances for diagnostic services be paid prior to release of such records, **provided, however, where treatment of a patient whose dental expenses are paid through Medicaid is discontinued by the dentist prior to the completion of the treatment, no charge for the above records shall be made or payment required.**

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

**(a)****BOARD OF PSYCHOLOGICAL EXAMINERS****Disclosure of Patient Information; Independent Professional Review Committee****Proposed Recodification: N.J.A.C. 13:42-6.1 to 13:42-5.1****Proposed New Rules: N.J.A.C. 13:42-6**

Authorized By: Board of Psychological Examiners, Duncan E. Walton, President.

Authority: L. 1985, c.256, sections 14 and 15 (to be codified as N.J.S.A. 45:14B-44 and N.J.S.A. 45:14B-45).

Proposal Number: PRN 1986-143.

Submit comments by May 21, 1986 to:  
Jeannette V. Balber  
Executive Secretary  
Board of Psychological Examiners  
1100 Raymond Boulevard  
Room 512  
Newark, New Jersey 07102

The agency proposal follows:

**Summary**

P.L. 1985, c.256 sets forth standards and procedures regarding the preservation of patient privacy in the context of third party reimbursement for psychological services rendered for the patient. Pursuant to P.L. 1985, c.256, the Board of Psychological Examiners is proposing regulations that deal with the disclosure of confidential patient information by psychologists to third party payors and with the establishment of an independent professional review committee. The proposed regulations create a mechanism by which third party payors can obtain information upon which to base their decisions of whether to continue or terminate benefits paid to patients receiving psychological services. A four step process is set forth. At stage I, the third party payor will request that the treating psychologist provide certain limited information about the patient directly to the third party payor. If, after receiving that information, the third party payor has reasonable cause to believe that the psychological treatment is not either usual, customary or reasonable, the third party payor may request an independent review of the psychological treatment by an independent professional review committee. This review may consist of as many as three levels (Stage II, Stage III, Stage IV). At each level of review, certain limited information is provided to the independent professional review committee by the treating psychologist; based on this information, the independent professional review committee will make a conclusion as to whether the treatment in question is usual, customary or reasonable. The release of any confidential information concerning a patient by a treating psychologist to the third party payor or the independent professional review committee must be authorized by the patient, and this authorization must be in writing.

Since the proposed new rules are codified as N.J.A.C. 13:42-6 and currently there are rules at subchapter 6, the existing N.J.A.C. 13:42-6.1 will be relocated and recodified as N.J.A.C. 13:42-5.1. Subchapter 5 is currently Reserved.

N.J.A.C. 13:42-6.1 contains definitions of terms utilized in this subchapter. Additionally, this section sets forth a statement of purpose as well as provisions of general applicability.

N.J.A.C. 13:42-6.2 sets forth the responsibilities of the treating psychologist at each stage (Stage I through Stage IV). This section specifies what information is to be provided by the treating psychologist at each stage and in what manner. This section also details what is to be included in the authorization form which must be signed by the patient before any information can be provided, and what occurs should a patient refuse to provide authorization. Further, this section specifies what the treating psychologist must do when a third party payor requests an independent review. Finally, this section states that sanctions will be imposed on treating psychologists who, absent good cause, do not comply with the law or these regulations.

N.J.A.C. 13:42-6.3 sets forth the responsibilities of the Board of Psychological Examiners and the independent professional review process. N.J.A.C. 13:42-6.4 sets forth the responsibilities and duties of the independent professional review committee at each level of review (Stages I, III and IV). This section also specifies that the entire review process shall be completed within twenty days of receipt of the review request

from the Board. This section further provides for the confidentiality of information provided to the reviewers. Finally, this section specifies that a reviewer shall report to the Board any unlawful act or practice that he believes has been committed by a treating psychologist.

**Social Impact**

P.L. 1985, c.256 was enacted in response to perceived problems in the manner in which third party payors previously obtained and maintained information concerning patients receiving psychological services. It is anticipated that the procedures and mechanisms set up by the proposed regulations will help maintain a more workable balance between the third party payor's legitimate need for information and the delicate relationship between a psychologist and his patient. The regulations should have a favorable impact on both licensed psychologists and third party payors as the regulations set forth exactly what confidential information may be disclosed and in what manner; both psychologist and third party payor will know what information can and cannot be disclosed. The proposed regulations should have a favorable impact on the public as well. Patients and prospective patients of psychologists will know that the confidential information discussed in sessions with their psychologists will be protected from disclosure to the greatest extent possible. Third party payors will obtain only certain very limited information at Stage I; the more detailed, though still limited, information disclosed to the independent professional review committee will not identify the patient. Although full exchange of information between a psychologist and the third party payor will be circumscribed by these regulations, the salutary impact of the regulations outweighs this restriction.

**Economic Impact**

The proposed regulations will have a substantial economic impact on the Board. Higher operating expenses for the Board will result from the costs associated with administering the review process and hiring and extra staff person ("Administrator"). The proposed regulations will have an economic impact on third party payors as the third party payor must pay the reviewers for the review it requests; the extent of the economic impact will be determined by how often third party payors request reviews. The proposed regulations should have a minimal impact on the public, although insurance costs could rise minimally as a result of the cost of this process to third party payors. The proposed regulations should have no economic impact on licensees, unless the Board at some later date finds it necessary to raise license fees to meet the costs associated with the review process.

OFFICE OF ADMINISTRATIVE LAW NOTE: Existing N.J.A.C. 13:42-6.1 to be recodified as N.J.A.C. 13:42-5.1.

Full text of the proposed new rule follows.

**SUBCHAPTER 6. DISCLOSURE OF PATIENT INFORMATION; INDEPENDENT PROFESSIONAL REVIEW COMMITTEE****13:42-6.1 General provisions**

(a) L.1985, c.256 sets forth certain standards and procedures regarding preservation of patient privacy within the contractual setting of insurance contracts and designates a peer review procedure to be accomplished by licensed psychologists appointed to an Independent Professional Review Committee (IPRC). In accordance with L.1985, c.256, the Board of Psychological Examiners is mandated to establish the independent professional review committee. Once established, the IPRC will be essentially independent of the Board; it will be a free standing entity whose members are appointed for a three year term. Members of the IPRC shall be psychologists licensed in New Jersey for the preceding five years and who have been engaged in active practice for that period. Members will be appointed by the Board from a pool of volunteers who shall be screened and trained by the Board. Considering the special responsibilities assigned to the IPRC, licensees appointed as members shall be active practitioners with a current minimum average of ten hours per week of direct service in the area of service he or she is authorized to review (for example, psychotherapy with adults and adolescents; psychotherapy with children; marital/family therapy; testing/assessment). In addition, members shall have demonstrated that they are respected and known by their professional colleagues for the quality of their clinical work and exemplary professional conduct. Once the reviewers are selected, most activities related to the review process will take place outside the Board's authority. An IPRC administrator will make assignments in each case and will be responsible for the processing of all review requests. In addition to the reporting requirement contained in L.1985 c.256, section 15, the Board

shall file an annual report with the Governor and the Director, Division of Consumer Affairs, commencing January 30, 1987.

(b) As used in L.1985, c.256, and in this subchapter, unless the context clearly requires otherwise and except as expressly otherwise provided:

"Customary" means that range of usual practices provided by psychologists of similar education, experience, and orientation within a similar geographic or socioeconomic area.

"Education" means the attainment of any of the educational programs and attendant degrees that have qualified a person for licensure as a psychologist in this State pursuant to N.J.S.A. 45:14B-1 et seq., for example, Ph.D., Ed.D., D.S.W. Holders of any of these degrees shall be deemed equivalent for the purpose of assigning reviewers of similar education to a given claim under review;

"Experience" means one of the following areas of specialized practice: psychotherapy with adults and adolescents; psychotherapy with children; marital/family therapy; or testing/assessment.

"Orientation" means one of the following five theoretical positions: behavior, humanistic/existential, psychoanalytic, systems or eclectic.

"Psychological services" means the provision of professional services founded upon psychological principles derived from a base of scientific knowledge and a recognized and accepted theory of clinical application which are used to promote the optimal development of an individual's potential or to ameliorate an individual's personality disturbances and maladjustment, as manifested in personal and interpersonal situations. Services shall be selected and rendered to patients based upon the treating psychologist's professional experience, knowledge of empirical and theoretical literature, and professional guidelines and standards. The services shall be necessary and appropriate in light of the patient's circumstances, the diagnosis, the reasonableness of goals, and the adequacy of progress.

"Reasonable" means that there is an acceptable probability that the patient will realize a significant benefit from the continuation of the psychological treatment.

"Stage I (Preliminary Disclosure)" means a request from a third party payor to obtain certain limited information about a patient from the treating psychologist for the purpose of permitting the patient to obtain or continue benefits from the third party payor for psychological services.

"Stage II Review" means a review conducted by an independent professional review committee for the purpose of determining whether the treatment is usual, customary or reasonable. The review shall be based on the following information: the case identification number, the status of the patient, the duration and frequency of treatment, the diagnosis, the prognosis and the level of function and the level of distress.

"Stage III Review" means a review conducted by the independent professional review committee for the purpose of determining whether the treatment is usual, customary or reasonable. The review will be based on a written statement provided by the treating psychologist describing his customary mode of treatment. Stage III Review will occur when the reviewers are unable to make a determination from the information provided in Stage II.

"Stage IV Review" means a review conducted by the independent professional review committee for the purpose of determining whether the treatment is usual, customary or reasonable. The review will be based on details and circumstances concerning the case under review provided by the treating psychologist. Stage IV Review will occur when the reviewers are unable to make a determination from the information provided in Stage III.

"Usual" means a practice in keeping with the particular psychologist's general mode of operation.

(c) Any consent or agreement purporting to waive the provisions of L.1985, c.256 or this subchapter shall be against public policy and void.

(d) If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provisions or applications of these regulations which can be given effect without such invalid, such invalidity shall not affect any other provisions or applications of these regulations which can be given without such invalid provision or application, and to this end the provisions of this subchapter are declared to be severable.

(e) Nothing herein contained shall preclude an interested party from filing a complaint with the Board regarding the conduct of an independent professional review committee member.

#### 13:42-6.2 Responsibilities of the treating psychologist

(a) Preliminary Disclosure (Stage I): A patient who is receiving or has received treatment from a licensed, practicing psychologist may be requested to authorize the psychologist to disclose certain confidential information to a third party payor for the purpose of obtaining benefits from the third party payor for psychological services. This preliminary

disclosure phase (Stage I) shall not involve the independent professional review committee. When a treating psychologist receives a request from a third party payor for information about psychological services rendered by the psychologist, the treating psychologist shall request from the patient or other designated person a valid authorization. The treating psychologist shall secure the authorization within 14 days of receiving the request from the third party payor unless precluded from doing so by the particular circumstances of the case.

1. The authorization shall:

i. Be in writing; and

ii. Specify the nature of the information to be disclosed, the person authorized to disclose the information, to whom the information may be disclosed, the specific purposes for which the information may be used at the time of disclosure and at any time in the future; and

iii. State that the patient is aware of the statutory privilege for confidential communication between a patient and a licensed psychologist; and

iv. State that the consent may be revoked in writing by the patient at any time, if such notice is given both the treating psychologist and the recipient named in the authorization; and

v. Be signed by the patient or the person authorizing the disclosure. If the patient is adjudicated incompetent or is deceased, the authorization shall be signed by the patient's legally authorized representative. When the patient is more than 14 years of age but has not yet reached the age of majority, the authorization shall be signed by the patient and by the patient's parent or legal guardian. When the patient is less than 14 years of age, the authorization shall be signed only by the patient's parent or legal guardian; and

vi. Contain the date upon which the authorization was signed; and

vii. Apply only to information existing as of that date and is effective only for one year from the date the authorization is signed; and

viii. A copy of the authorization shall be provided to the person authorizing the disclosure.

2. The treating psychologist shall provide to the third party payor basic patient information limited to the following:

i. Administrative information, further defined as patient's name, age, sex, address, educational status, identifying number, date of onset of difficulty, date of initial consultation, dates and character of sessions (individual or group), and fees; and

ii. Diagnostic information, further defined as therapeutic characterizations of the type found in the DSM III or other professionally recognized diagnostic manual; and

iii. Status of the patient (voluntary or involuntary; inpatient or outpatient); and

iv. The reason for continuing psychological services stated in terms of the various functions assessed and professional judgment as to level of impairment and level of distress. Each level shall be rated as mild, moderate, severe or extreme; and

v. Prognosis, including estimated minimal length of future treatment, expressed in terms of an identified goal(s).

vi. The information described in i. through v. above shall be sent to the third party payor by the treating psychologist within 10 days of receipt of the authorization.

(b) Further Review Requested (Stages II, III and IV): Further review by an independent professional review committee will follow when the third party payor has reasonable cause to believe that the psychological treatment in question may be neither usual, customary or reasonable.

(c) Arrangement for Independent Professional Review Committee and Procedures to be Utilized in Connection with Review (Stages II, III and IV) are as follows:

1. Within 10 days of receipt by the psychologist of a written request from the third party payor for such review the treating psychologist shall notify the State Board of Psychological Examiners of the request. The treating psychologist shall, at the same time, identify for the Board his or her major theoretical orientation: for example behavioral, humanistic/existential, psychoanalytic, systems or eclectic; and shall also specify his or her area of practice specialization: for example psychotherapy with adults and adolescents, psychotherapy with children, marital/family therapy, or testing/assessment.

2. Within 10 days of receipt of notification by the treating psychologist, the Board shall designate two or more members of the independent professional review committee to serve as reviewers of the case and shall inform the treating psychologist of their names and addresses.

3. The treating psychologist shall immediately disclose to the reviewers requested confidential information concerning the patient's treatment only pursuant to a valid written authorization from the patient. The

information that the treating psychologist shall disclose is limited to the following:

i. For a Stage II review: in writing, the case identification number, the status of the patient, duration and frequency of treatment, diagnosis, prognosis, and the level of functioning and level of distress, both described by the terms mild, moderate, severe or extreme.

ii. For a Stage III review: a written statement describing the treating psychologist's customary mode of treatment for the particular diagnosis given.

iii. For a Stage IV review: details and circumstances concerning the case under review.

4. The information required to be transmitted to the independent professional review committee shall be communicated by the treating psychologist directly to the reviewers. This information is not to be communicated to the Board.

(d) In the event a patient declines to provide the authorization required by these rules, the review process shall not be undertaken. The treating psychologist shall promptly notify the third party payor and any assigned reviewers in the event that the patient declines to provide authorization complying with the requirements of any of the stages of review established by L.1985, c.256.

(e) Absent good cause being demonstrated, failure of the treating psychologist to comply with any of the provisions of L.1985 c.256 or these rules shall subject the licensee to any of the disciplinary sanctions authorized by law. Good cause shall include, but not be limited to, taking vacations of reasonable length, illness, serious family problems, or not receiving daily mail deliveries if there is more than one practice location.

13:42-6.3 Responsibilities of the Board of Psychological Examiners:  
Appointments of Independent Professional Review Committee Members

(a) Within 10 days of receipt of notification by a treating psychologist of a request by the third party payor for a Stage II review, the Board shall designate two or more members of the Independent Professional Review Committee to conduct that review and shall notify the treating psychologist of the assignment.

(b) To the extent practicable, the reviewers designated for a particular case review shall be knowledgeable in the orientation used by the treating psychologist and the customary practices of that orientation.

13:42-6.4 Responsibilities of the Independent Professional Review Committee

(a) Conduct of the review for Stages II, III and IV shall be as follows:

1. The reviewers shall examine the material submitted by the treating psychologist as specified in N.J.A.C. 13:42-6.2(c)3.

2. Stage II Review:  
i. The purpose of the Stage II review is to determine, on the basis of the limited information provided, whether the psychological services, for which claimed payment is made are usual, customary or reasonable.

ii. Each reviewer shall make an independent assessment of the material and shall then confer with the other designated reviewer(s) to ascertain whether or not there is agreement on the finding.

iii. If the two reviewers are unable to agree that services are usual, customary or reasonable or they both agree that the services are not usual, customary or reasonable or one or both reviewers find the information provided to be insufficient to reach such a conclusion the reviewers shall proceed to Stage III and shall so notify the Board and the treating psychologist.

iv. If, on the basis of the information provided the reviewers can certify that the treatment is usual, customary or reasonable, the reviewers shall so notify the third party payor and the Board. In the event agreement is reached that the treatment is usual, customary or reasonable, no further review shall be undertaken.

3. Stage III Review:

i. For a Stage III review, the two reviewers shall request the treating psychologist to provide a written statement describing his or her customary mode of treatment for the particular diagnosis given.

ii. If, on the basis of the information provided, the reviewers can certify that the treatment is usual, customary or reasonable, the reviewers shall so notify the third party payor and the Board. In the event agreement is reached that the treatment is usual, customary or reasonable, no further review shall be undertaken.

iii. If the two reviewers are unable to so agree or they both agree that the services are not usual, customary or reasonable or one or both reviewers find the information provided to be insufficient to reach such a conclusion, the reviewers shall proceed to Stage IV and shall so notify the Board and the treating psychologist.

4. Stage IV Review:

i. For a Stage IV review, a third reviewer shall be appointed by the Board. The reviewers shall request the treating psychologist to provide details and circumstances concerning the case under review.

ii. On the basis of the information provided, the reviewers shall then certify to the third party payor their conclusion as to whether or not the treatment is usual, customary or reasonable. The conclusion of a majority of the three person independent professional review committee shall be reported as the conclusion of the independent professional review committee to the third party payor and the Board. Additionally, the reviewers shall certify to the third party payor the date and length of time of their consultation in reviewing the case.

5. The entire review process, that is, Stages II, III (if necessary) and IV (if necessary), shall be completed by the reviewers within 20 days of their receipt of the review request from the Board. The Board shall interpret the time frame to be exclusive of days lost as a result of injury or extenuating personal circumstances. The reviewer shall agree to inform the Board, or arrange for another to do so, when such unforeseen event prevents the timely completion of a review assignment. The Board shall, in that event, attempt to appoint a substitute reviewer to complete the assignment.

6. All information provided by the treating psychologist to the reviewers shall be confidential and shall not be disclosed to the third party payor or to any private person.

7. If a reviewer believes that the information disclosed in the review raises a substantial possibility that the treating psychologist has engaged in any act or practice declared unlawful by a statute or regulation administered by the Board, the reviewer shall make a report of same to the Board, which may then conduct its own inquiry.

8. Upon termination of practice, a reviewer or a reviewer's designee shall transfer all peer review records to the independent professional review committee office.

## NEW JERSEY RACING COMMISSION

The following proposals are authorized by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.

Submit comments by May 21, 1986 to:  
Bruce H. Garland, Executive Director  
New Jersey Racing Commission  
Richard J. Hughes Justice Complex  
CN 088  
Trenton, New Jersey 08625

(a)

### Thoroughbred Rules Policing Requirements

#### Proposed Amendment: N.J.A.C. 13:70-1.17

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1986-127.

The agency proposal follows:

#### Summary

The proposed amendment to N.J.A.C. 13:70-1.17 removes a reference from New Jersey Racing Commission rules concerning a Racing Commission representative being present when a person is ejected from a licensee's grounds. The amendment is in line with recent case law distinguishing between ejections (action by track association based upon a common law right) and suspensions which are actions taken by the New Jersey Racing Commission against a licensee. Legal counsel has advised the Racing Commission that there should be no state involvement in ejection proceedings. The proposed amendment to delete such reference complies with that advice and is in conformity with present procedures.

#### Economic Impact

The proposed amendment will have no economic impact on the public, state, licensees or track association because no costs or charges are inherent in the deletion.

#### Social Impact

The proposed amendment will have no social impact given that the deletion is in line with recent court decisions and, upon advice of counsel, there is no state involvement in ejection proceedings at this time.

Full text of the proposal follows (deletions indicated in brackets [thus]).

13:70-1.17 Policing requirements

(a) An association conducting race meetings under license from the Racing Commission shall properly police its grounds, including the stable area and paddock, and shall eject therefrom all unauthorized persons, known undesirables, touts, persons believed to be bookmakers or connected with bookmakers, persons under suspension or ruled off, persons of lewd or immoral character, and persons guilty of boisterous or disorderly conduct or other conduct detrimental to racing or the public welfare. [Where practical, a representative of the Racing Commission shall be presented at the hearing or interrogations conducted by the association on the ejection of such persons.]

(b) (No change.)

(a)

**Harness Rules  
Policing Requirements**

**Proposed Amendment: N.J.A.C. 13:71-5.1**

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1986-128.

The agency proposal follows:

**Summary**

The proposed amendment to N.J.A.C. 13:71-5.1 removes a reference from New Jersey Racing Commission rules concerning a Racing Commission representative being present when a person is ejected from a licensee's grounds. The amendment is in line with recent case law distinguishing between ejections (action by track association based upon a common law right) and suspensions which are actions taken by the New Jersey Racing Commission against a licensee. Legal counsel has advised the Racing Commission that there should be no state involvement in ejection proceedings. The proposed amendment to delete such reference complies with that advice and is in conformity with present procedures.

**Economic Impact**

The proposed amendment will have no economic impact on the public, state, licensees or track association because no costs or charges are inherent in the deletion.

**Social Impact**

The proposed amendment will have no social impact given that the deletion is in line with recent court decisions and, upon advice of counsel, there is no state involvement in ejection proceedings at this time.

Full text of the proposal follows (deletions indicated in brackets [thus]).

13:71-5.1 Policing requirements

(a) An association conducting race meetings under license from the Racing Commission shall properly police its grounds, including the stable area and paddock, and shall eject therefrom all unauthorized persons, known undesirables, touts, persons believed to be bookmakers or connected with bookmakers, persons under suspension or ruled off, persons of lewd or immoral character, and persons guilty of boisterous or disorderly conduct or other conduct detrimental to racing or the public welfare. [Where practical, a representative of the Racing Commission shall be presented at the hearing or interrogations conducted by the association on the ejection of such persons.]

(b) (No change.)

**STATE**

(b)

**DIVISION OF ARCHIVE AND HISTORY AND  
RECORDS MANAGEMENT**

**Record Retention Rules**

**Proposed Readoption: N.J.A.C. 15:3**

Authorized By: Jane Burgio, Secretary of State.

Authority: N.J.S.A. 47:3-15 et seq., specifically 47:3-20.

Proposal Number: PRN 1986-117.

Submit comments by May 21, 1986 to:

Charles C. Hager  
Assistant Counsel  
Department of State  
CN 300  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

The Division of Archive and History and Records Management proposes to readopt the text of N.J.A.C. 15:3, which, pursuant to Executive Order No. 66(1978), expires May 20, 1986. The following is a summary of the contents of the chapter.

Subchapter 1 contains definitions.

Subchapter 2 constitutes the State Records Manual. This subchapter limits destruction of State public records, and explains the system of retention, storage and destruction of public records. Retention covers such factors as: time period of retention; method of retention and hard copy versus microfilm versus a microfiche system.

Subchapter 3 constitutes the Local Records Manual. This subchapter covers the same subject matter as subchapter 2 discussed above, but is applicable to county and municipal records.

**Social Impact**

The proposed readoption of the records retention rules do not change the current procedures which ensure the preservation of Government Records needed to the ongoing operation of State Government and its subdivisions. New Jersey has an efficient system of record retention and the proposed readoption of the records retention rules is designed to preserve this efficiency.

**Economic Impact**

The proposed readoption of the current rules will not change the economic impact of the record retention system. The State centralized its records retention efforts several years ago to increase efficiency and consistency. These two goals continue to be the overriding objective of the State's Record Management System.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 15:3.

**TRANSPORTATION**

(c)

**TRANSPORTATION OPERATIONS**

**Speed Limits**

**Route 23 in Sussex County**

**Proposed Amendment: N.J.A.C. 16:28-1.25**

**Public Notice**

Take notice that the Department of Transportation has **withdrawn** the proposed amendment concerning N.J.A.C. 16:28-1.25, establishing a "school zone" speed limit along Route 23 in Wantage Township, Sussex County, as published in the March 17, 1986 New Jersey Register at 18 N.J.R. 547(a). The same proposal to amend N.J.A.C. 16:28-1.25 had appeared in a previous Register. See: March 3, 1986 issue of the New Jersey Register at 18 N.J.R. 463(b).

**COMMUNITY AFFAIRS****(a)****NEW JERSEY COUNCIL ON AFFORDABLE HOUSING****Procedural Rules****Proposed New Rules: N.J.A.C. 5:91**

Authorized By: Arthur E. Kondrup, Chairman, Council on Affordable Housing.

Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-308.

Proposal Number: PRN 1986-136.

A **public hearing** concerning this proposal will be held on:

May 8, 1986 at  
1:30 P.M. to 4:30 P.M. and  
6:00 P.M. to 8:00 P.M. at  
Somerset County College  
Somerville, New Jersey

Submit comments by May 21, 1986 to:

Douglas V. Opalski, Executive Director  
New Jersey Council on Affordable Housing  
3625 Quakerbridge Road  
CN 18550  
Trenton, New Jersey 08650-2085

The agency proposal follows:

**Summary**

The Fair Housing Act, P.L. 1985 Chapter 222 (C. 52:27D-301) provides a statutory method designed to enable every municipality in the State to determine and provide for its fair share of its Region's need for low and moderate income housing.

The proposed procedural rules detail the process by which the Council on Affordable Housing will evaluate municipal petitions for substantive certification of housing elements and fair share plans. The rules provide for the participation of objectors to all such municipal plans in a process of mediation and review. The rules also delineate the circumstances under which any matter before the Council may be referred to the Office of Administrative Law, for adjudication as a contested case. Lastly, these proposed rules describe the process by which the Council will grant, deny or conditionally grant substantive certification of a municipal housing element and fair share plan.

**Social Impact**

The "social impact" of the **Mount Laurel** decisions has been far reaching; in enacting the Fair Housing Act, the Legislature specifically determined that "the interest of all citizens, including the low and moderate income families in need of affordable housing, would be best served by a comprehensive planning and implementation response to this constitutional obligation." Consequently the Legislature concluded that this constitutional obligation would be most effectively addressed by a statewide system of planning administered by the Council on Affordable Housing. Thus, administrative regulation of the **Mt. Laurel** obligation will facilitate a uniform and consistent implementation of the doctrine and will provide for coherency in addressing housing issues.

**Economic Impact**

The Fair Housing Act encourages municipalities to expend their resources to help provide their fair share of low and moderate income housing. Moreover, the Act provides for various financial resources which may be utilized by participating municipalities in order to assist in the actual construction of low and moderate income housing. Municipalities are also encouraged to develop innovative techniques which will more effectively and efficiently utilize existing resources in order to better meet the need for affordable housing. Additionally, the statute provides for municipal cooperation in addressing the regional need for low and moderate income housing through regional contribution agreements whereby municipalities will finance construction or provide other resources, to address its share of the region's need which resides in another municipality. The proposed procedural rules and regulations are designed to facilitate and decision-making process associated with the determination of a municipality's fair share housing obligation, and to allow for comprehensive and planned development to be undertaken with regard to a regional and statewide policy. It is expected that such a system will better provide for the efficient expenditure of resources on both a local and regional level.

Full text of the proposed new rule follows:

CHAPTER 91  
PROCEDURAL RULES OF THE NEW JERSEY COUNCIL ON  
AFFORDABLE HOUSING

**SUBCHAPTER 1. GENERAL PROVISIONS****5:91-1.1 Short title**

The provisions of this chapter shall be known as "the procedural rules of the New Jersey Council on Affordable Housing."

**5:91-1.2 Definitions**

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

"Act" means the Fair Housing Act of 1985, L. 1985, c. 222, (C. 52:27D-301, et seq.).

"Agency" means the New Jersey Housing and Mortgage Finance Agency established by L. 1983, c. 530 (C. 55:14K-1 et seq.).

"Council" means the New Jersey Council on Affordable Housing established under the Act, and which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in this State.

"Fair Share Plan" means that plan or proposal, which is in a form that may readily be converted into an ordinance, by which a municipality proposes to satisfy its obligation to create a realistic opportunity to meet the low and moderate income housing needs of its region, and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low and moderate income housing, as provided in sections 9 and 14 of the Act, and as further described and defined in N.J.A.C. \_\_\_\_\_ (substantive rules).

"Filed" means accepted for filing by the Council.

"Housing element" means that portion of a municipality's master plan, consisting of reports, statements, proposals, maps, diagrams and text, designed to meet the municipality's fair share of its region's present and prospective housing needs, particularly with regard to low and moderate income housing, as further described and defined by N.J.A.C. \_\_\_\_\_ (substantive rules).

"Housing region" means a geographic area, determined by the Council, of no less than two nor more than four contiguous, whole counties which exhibit significant social, economic and income similarities, and which constitute to the greatest extent practicable the primary metropolitan statistical areas as last defined by the United States Census Bureau prior to July 2, 1985.

"Petition for Substantive Certification" means that petition which a municipality files, or is deemed to have filed, which engages the Council's mediation and review process.

"Receiving municipality" means, for purposes of a regional contribution agreement (RCA), a municipality which agrees to assume a portion of another municipality's fair share obligation.

"Sending municipality" means, for purposes of a regional contribution agreement (RCA), a municipality which seeks to transfer a portion of its fair share obligation to another willing municipality.

**SUBCHAPTER 2. RESOLUTIONS OF PARTICIPATION****5:91-2.1 Form**

(a) A resolution of participation shall express the intention of the municipality to participate in the administrative procedures outlined in the Act and in these rules and shall contain such information and be in such form as the Council may from time to time prescribe.

(b) At the time it files a resolution of participation, or at the time these rules are adopted, whichever is later, each participating municipality shall provide notice that it has submitted such a resolution to any interested party which has requested to receive such notice.

(c) A resolution of participation will be filed upon receipt by the Council.

**5:91-2.2 Action equivalent to a resolution of participation**

A municipality in an exclusionary zoning lawsuit transferred to the Council by the courts shall be considered to have filed a resolution of participation as of the date of the transfer.

**SUBCHAPTER 3. HOUSING ELEMENT AND FAIR SHARE PLAN****5:91-3.1 Development of housing element**

(a) A municipality which files a resolution of participation within four months after the effective date of the Act shall, within five months after the Council's adoption of its substantive criteria and guidelines, prepare and file with the Council a housing element and any fair share housing

ordinance introduced and given first reading and second reading in a hearing pursuant to N.J.S.A. 40:49-2 which implements the housing element.

(b) A municipality which files a resolution of participation under this subchapter shall, within 30 days after the Council's adoption of its substantive criteria and guidelines, file with the Council, and serve upon any interested party which has so requested, a letter or report, in such form as the Council may from time to time determine, which contains, at a minimum, the following items:

1. The municipality's calculations of its fair share of its region's present and prospective need, as determined by a formula or methodology established by the Council; and

2. A statement of those specific adjustments to the calculation set forth in Section 7 of the Act, which the municipality intends to rely upon to alter the initial calculation, and the general reasons therefor; and

3. A proposed schedule for the preparation of a draft housing element and fair share plan, together with a description of all expert reports or studies upon which the municipality intends to rely in support of any proposed adjustments and a proposed schedule for the submission of such expert reports or studies; and

4. A description of all efforts the municipality has undertaken to provide notice to interested parties and the public that it has engaged the administrative procedures of the Act and will propose a housing element and fair share plan for the Council's review.

(c) Within 15 days of receipt of a municipality's letter of intent, any interested party or potential objector shall file with the Council a statement of those portions of the report to which it objects, and shall state the reasons therefor.

(d) A municipality which files a resolution of participation under this subchapter shall, within three months after the Council's adoption of its substantive criteria and guidelines, file with the Council, and serve upon any interested party which has so requested, a draft housing element and fair share plan, which addresses in detail those items and factors identified in the municipality's letter of intent. The draft report shall be in a form as the Council may from time to time determine and shall include at least the following:

1. A statement of those factors set forth in Section 7 of the Act upon which the municipality will rely to adjust its calculated fair share of its region's present and prospective need for low and moderate income housing; and

2. A description and explanation of the expert reports and studies upon which the municipality relies and which supports its request for such adjustments; and

3. A copy of all such expert reports and studies or a status report of all such documents; and

4. Documentation of all efforts at premediation with interested parties and objectors, as well as any premediation conferences with Council staff, as well as documentation of any and all public hearings held in the development of a draft housing element and fair share plan.

(e) Within 15 days after receipt of a municipality's draft housing element and fair share plan, any interested party or potential objector which disputes any findings or statements contained in the draft shall notify the Council and the participating municipality of its objections and a summary of the reasons therefor. Any interested party or potential objector shall also document all efforts at premediation with the participating municipality, including any participation at public hearings conducted by the municipality regarding the draft housing element and fair share plan.

(f) A municipality which files a resolution of participation under this subchapter shall, within five months after the Council's adoption of its substantive criteria and guidelines, file with the Council and serve upon any interested party which has so requested, the municipality's proposed housing element and fair share plan, as well as any fair share housing ordinance introduced and given first reading and second reading in a hearing pursuant to N.J.S.A. 40:49-2 which implements the housing element. The proposed housing element and fair share plan shall be in a form determined by the Council and shall include at least the following:

1. A complete description of the municipality's calculation of its fair share of its region's present and prospective need for low and moderate income housing, pursuant to a methodology or formula determined by the Council; and

2. A complete and final statement of any and all adjustments, set forth in Section 7 of the Act, which the municipality relies upon in its calculation, as well as a summary of all support documentation, expert reports, studies and technical data; and

3. Copies of all such expert reports, studies or technical data; and

4. A response to objections to the municipality's draft housing element and fair share plan; and

5. Documentation of all efforts at premediation with potential objectors or interested parties, all efforts at premediation conferences with the Council, and all public hearings undertaken in the development of the municipality's proposed housing element and fair share plan.

#### 5:91-3.2 Transferred cases

A municipality in an exclusionary zoning lawsuit transferred to the Council by the courts pursuant to section 16 of the Act, shall within five months from the date of transfer or promulgation of substantive criteria and guidelines by the Council, whichever is later, prepare and file with the Council a housing element and fair share plan. Any such municipality shall adhere to the procedures and time constraints specified in N.J.A.C. 5:91-3.1; all time periods set forth therein shall be calculated to commence from the date of transfer.

#### 5:91-3.3 Dismissal

In the event that a municipality fails to timely submit its housing element and fair share plan, or undertake those actions required pursuant to N.J.A.C. 5:91-3.1, the Council shall no longer retain jurisdiction and shall dismiss the matter.

#### 5:91-3.4 Municipality which does not file resolution and is not in an exclusionary zoning lawsuit

A municipality which does not file a resolution of participation within four months after the effective date of the Act, and which is not in an exclusionary zoning lawsuit, may do so at any time thereafter. Upon filing a resolution of participation, the municipality shall request the Council to establish a schedule for the submission of the municipality's housing element and fair share plan, and any proposed regional contribution agreement.

### SUBCHAPTER 4. PETITIONS FOR SUBSTANTIVE CERTIFICATION

#### 5:91-4.1 Petition

(a) A petition for substantive certification shall be in such form and shall contain such information as the Council may from time to time determine.

(b) A municipality may, at any time within six years after it has filed a housing element and fair share plan with the Council, petition for substantive certification.

#### 5:91-4.2 Action equivalent to a petition for substantive certification

A municipality in any exclusionary zoning lawsuit transferred to the Council by the courts shall be deemed to have filed a petition for substantive certification upon the timely submission of the municipality's housing element and fair share plan as required pursuant to N.J.A.C. 5:91-3.2.

#### 5:91-4.3 Notice

(a) A municipality which has filed a petition for substantive certification, or is deemed to have so filed, shall publish notice of this petition in a newspaper of general circulation within the municipality and the county.

(b) The Council shall publish an updated list of all petitions for substantive certification it has received monthly in newspapers of general circulation within the State.

#### 5:91-4.4 Inspection

A municipality which has filed a petition for substantive certification and proposed housing element and fair share plan with the Council shall make available for public inspection within the municipality, during business hours, copies of the proposal and supporting documentation, and shall include in its notice made pursuant to N.J.A.C. 5:91-4.3 the times, and places within the municipality at which the proposal will be made available for public inspection.

### SUBCHAPTER 5. OBJECTIONS TO A PROPOSED HOUSING ELEMENT AND FAIR SHARE PLAN

#### 5:91-5.1 Objection

(a) Within 45 days of publication of the notice of a municipality's petition for substantive certification, any person shall file objections with the Council. These objections shall be in a form as may be determined by the Council and shall include at least:

1. A statement as to each and every aspect of the municipality's proposed final housing element and fair share plan with which the person disputes; and

2. An explanation of the basis for each and every such dispute or objection, including, where appropriate, citations to expert reports, studies, or other data relied upon; and

3. Copies of all such expert reports, studies and data relied upon; and  
4. Proposed modifications, changes, or other measures which will resolve the objection or dispute consistent with the Council's criteria and guidelines; and

5. A statement documenting all efforts at premediation, participation in conferences, or public hearings and a summary of the results of any such efforts.

(b) An objection shall constitute as completely as possible a full statement of all issues, or matters contained in the proposed housing element and fair share plan, with which the objector is in dispute.

#### SUBCHAPTER 6. CONSIDERATION OF A MUNICIPALITY'S HOUSING ELEMENT AND FAIR SHARE PLAN WHERE NO OBJECTIONS ARE FILED

##### 5:91-6.1 Council review

(a) Unless an objection to a municipality's proposed housing element and fair share plan is filed within 45 days of the publication of the notice of the municipality's petition for substantive certification, the Council shall review the petition and shall issue substantive certification if it shall find that:

1. The municipality's proposed housing element and fair share plan is consistent with the rules and criteria adopted by the Council and is not inconsistent with achievement of the low and moderate income housing needs of the region as adjusted pursuant to the Council's criteria and guidelines; and

2. The combination of the elimination of unnecessary housing cost generating features from the municipal land use ordinances and regulations, and the affirmative measures in the final proposed housing element and fair share plan make the achievement of the municipality's fair share of low and moderate income housing realistically possible after allowing for the implementation of any regional contribution agreement approved by the Council.

##### 5:91-6.2 Conference

In conducting its review of a petition for substantive certification the Council may meet with the municipality.

##### 5:91-6.3 Grant, denial or conditional denial of substantive certification

(a) Upon a review of a petition for substantive certification the Council may grant the petition, deny the petition, or condition its denial of certification upon changes in the municipality's proposed housing element or fair share plan. Any such denial or conditions for approval shall be in writing and shall set forth the reasons for the denial or the imposition of conditions.

(b) If, within 60 days of the Council's denial or conditional denial of petition for substantive certification, the municipality refiles its petition with changes satisfactory to the Council, the Council shall issue substantive certification.

(c) Within 45 days after the Council has granted substantive certification the municipality shall adopt its fair share housing ordinance as approved by the Council.

#### SUBCHAPTER 7. MEDIATION

##### 5:91-7.1 General

(a) The Council shall engage in mediation where a timely objection to a municipality's petition for substantive certification is filed. The Council may appoint a designee to conduct mediation, and the Council or its designee shall meet with the representatives of the municipality and the objectors and attempt to mediate a resolution of the dispute.

##### 5:91-7.2 Scope of mediation

(a) Within 10 days after a matter is referred to the Council for mediation, the Council, or its designee, shall meet with representatives of the municipality and the objector and shall establish a schedule for mediation.

(b) The Council or its designee shall meet with the municipality and the objectors as often as the Council or its designee shall determine necessary and may impose such deadlines for the submission of information, reports, studies or other documentation as the Council or its designee shall find necessary.

(c) The Council or its mediator may, upon notice to the parties, during the course of any mediation, rely upon or use any interim adjudications previously entered by a trial court in the matter, or any stipulations previously entered into by the parties in any such litigation.

(d) The Council may during the mediation, determine to review itself or to refer to the Office of Administrative Law any issue which may preclude a satisfactory conclusion to the mediation process. This review shall be conducted as an adjudication complying with all applicable due process requirements.

(e) Mediation before the Council or its designated mediator may be conducted for a period of not more than 60 days after the time for the receipt of objections to a petition for substantive certification has expired. If the Council is dissatisfied with the progress of the mediation proceedings, or determines that the parties have reached an impasse, and that mediation could not resolve the dispute, the Council may declare and end to the mediation process and refer the matter to the Office of Administrative Law for adjudication as a contested case as provided in N.J.A.C. 5:91-8. The period for mediation established in this section may be extended by the Council for good cause shown.

##### 7:91-7.3 Review of mediation

(a) Before the conclusion of the 60-day mediation period, if such mediation was conducted by a mediator designated by the Council, the mediator shall prepare a report and recommendation to the Council, detailing the following factors:

1. The progress of the mediation proceedings; and
2. The issues in dispute between the parties; and
3. The stipulations or other agreements between the parties; and
4. A recommendation that the Council either grant, deny, or conditionally deny substantive certification, and the reasons therefor, or a recommendation that the matter be referred to the Office of Administrative Law for adjudication as a contested case.

(b) The Council shall determine whether to grant, deny or conditionally deny substantive certification, or to refer the matter to the Office of Administrative Law for adjudication as a contested case.

(c) If the matter is referred to the Office of Administrative Law, the parties shall be bound by any agreements entered into during the mediation.

#### SUBCHAPTER 8. REFERRAL TO OFFICE OF ADMINISTRATIVE LAW (OAL)

##### 5:91-8.1 General

(a) In the event mediation efforts are unsuccessful the Council shall determine whether to refer the matter to the Office of Administrative Law (OAL) for resolution as a contested case. Upon determining that the matter shall be referred to the Office of Administrative Law for adjudication as a contested case, the Council shall transmit the matter to the OAL together with the mediation report, the result of any adjudication under N.J.A.C. 5:91-7.2(d), the municipality's petition for substantive certification and any objections thereto.

(b) The Office of Administrative Law shall expedite its hearing process as much as practicable in accordance with N.J.S.A. 52:27D-315(c).

(c) A written transcript of all oral testimony and copies of all exhibits introduced into evidence shall be submitted to the Council by the Office of Administrative Law simultaneously with a copy of the initial decision. The costs of the transcript shall be shared equally by the municipality and the objectors.

#### SUBCHAPTER 9. COUNCIL'S REVIEW OF THE INITIAL DECISION

##### 5:91-9.1 Review

Within 45 days after the issuance of an initial decision from the Office of Administrative Law, the Council shall, upon review of the record submitted by the Administrative Law Judge, adopt, reject or modify the recommended report and decision. Unless the Council modifies or rejects the initial decision within this period of time, the decision of the Administrative Law Judge shall be deemed adopted. For good cause shown, upon certification by the Director of the Office of Administrative Law and the Council, the time limit established under this subchapter may be extended pursuant to N.J.A.C. 1:1-16.6.

#### SUBCHAPTER 10. GRANT, DENIAL OR CONDITIONAL DENIAL OF SUBSTANTIVE CERTIFICATION

##### 5:91-10.1 Substantive certification

(a) Substantive certification, shall be issued if:

1. The municipality's proposed housing element and fair share plan is consistent with the rules and criteria adopted by the Council and not inconsistent with the obligation to create a realistic opportunity to meet the low and moderate income housing needs of its region as adjusted pursuant to the Council's criteria and guidelines; and

2. The combination of, the elimination of unnecessary housing cost generating features from the municipal land use ordinances and regulations, and, affirmative measures in the housing element and fair share plan make the achievement of the municipality's fair share of low and

moderate income housing realistically possible after allowing for the implementation of any regional contribution agreement approved by the Council.

(b) Upon conducting the review set forth in (a) above, the Council may deny the petition for substantive certification, or condition a grant of substantive certification upon specific changes in the housing element or fair share plan. Any denial or conditions for approval shall be in writing and shall set forth the reasons for the denial or conditions. If, within 60 days of the Council's denial or conditional denial, the municipality refiles its petition with changes satisfactory to the Council, the Council shall issue substantive certification.

(c) In conducting its review set forth in this section, the Council may meet with the municipality and any objector thereto.

(d) Within 45 days of the grant of substantive certification, the municipality shall adopt its fair share housing ordinance as approved by the Council. The Council's grant of certification will be void and of no force and effect in the event that any municipality fails to timely adopt its fair share ordinance.

## SUBCHAPTER 11. GENERAL POWERS

### 5:91-11.1 Restraining Orders

At any time, upon its own determination, or upon the application of any interested party, and after a hearing and opportunity to be heard, the Council may issue such orders as may be necessary to require that a participating municipality take appropriate measures to preserve scarce resources that may be essential to the satisfaction of the municipality's obligation to provide for its fair share of its region's present and prospective need for low and moderate income housing.

### 5:91-11.2 Accelerated denial of substantive certification

At any time, upon its own determination, or upon the application of any interested party, and after a hearing and opportunity to be heard, the Council may deny substantive certification without proceeding further with the mediation and review process.

## SUBCHAPTER 12. REGIONAL CONTRIBUTION AGREEMENTS (RCAs)

### 5:91-12.1 Terms of agreement

(a) A municipality may propose to transfer up to 50 percent of its fair share to another municipality within its housing region by means of a contractual agreement into which two municipalities voluntarily enter. A sending municipality which is required to submit its housing element and fair share plan within five months, as provided in N.J.A.C. 5:91-3.1, shall include in its letter of intent and draft housing element and fair share plan the following:

1. A sending municipality which proposes to transfer a portion of its fair share to another receiving municipality shall include within its letter of intent:

- i. A statement of reasons for the proposed regional contribution agreement; and
- ii. A summary of the proposed agreement, including an estimation of the number of units to be transferred, and an explanation or description of any proposed compensation for the acceptance of such units by a receiving municipality; and

2. Draft Housing Element and Fair Share Plan: A sending municipality shall include within its draft report a detailed statement of the terms and conditions of a proposed regional contribution agreement which shall include specific information regarding the factors enumerated in 1. above, and which shall further specify the range of costs associated with such a proposed agreement and the source of any funds or resources upon which the sending municipality will rely. The draft shall also contain an alternative plan by which the municipality will achieve its fair share in the event the municipality fails to enter into its proposed regional contribution agreement.

(b) A municipality which proposes to enter into a regional contribution agreement shall include within its proposed housing element and fair share plan a statement of the terms and conditions of any proposed agreement, including:

1. The number of units to be transferred; and
2. The amount of compensation to be paid in return for such a transfer, the nature of such compensation, and the source of such compensation; and
3. A draft or final form of contract which includes all terms and conditions of the regional contribution agreement; and
4. A memorandum of understanding with a receiving municipality that such receiving municipality will enter into the proposed regional contribu-

tion agreement with the sending municipality and will execute an agreement substantially embodying the terms and conditions set forth above, and which includes a schedule for the submission of a project plan by the receiving municipality to the Agency for review, as set forth in section 12(e) of the Act.

(c) A regional contribution agreement, the substance of which has been approved by the Council in granting a petition for substantive certification, may be entered into upon the Council awarding substantive certification or thereafter.

### 5:91-12.2 Review by county planning boards or agencies

(a) Regional contribution agreements shall be reviewed by the county planning board or agency of the county in which the receiving municipality is located. The county planning board or agency shall consider whether or not the transfer agreement is in accordance with sound comprehensive regional planning, in accordance with the terms of the master plan and zoning ordinance of both sending and receiving municipalities, its own county master plan, and the State Development and Redevelopment Plan (SDRP) or State Development Guide Plan (SDGP) if the SDRP is not completed.

1. In the event that there is no county planning board or agency in the county in which the receiving municipality is located, the Council shall determine whether or not the agreement is in accordance with sound comprehensive regional planning.

(b) All determinations of a county planning board or agency shall be in writing and shall be made within such time limits as the Council may prescribe, beyond which the Council shall make those determinations. No fee shall be paid to the county planning board or agency for its review pursuant to this subsection.

### 5:91-12.3 Review by the Council

(a) Upon review of a proposed regional contribution agreement, by the county planning board or agency in which the receiving municipality is located, and which has been approved in substance by the Council in granting substantive certification of a municipality's petition, the Council shall determine whether or not the proposed agreement creates a realistic opportunity for the provision of low and moderate income housing, within convenient access to employment opportunities, as set forth in the municipality's petition.

(b) Upon the recommendation of the Agency, the Council may approve as part of the regional contribution agreement a provision that the time limitations for contractual guarantees or resale controls for low and moderate income units included in the proposed project be for less than 30 years if the Agency determines that modification is necessary to assure the economic viability of the project.

(c) The Council shall approve a proposed regional contribution agreement upon a finding that:

1. The agreement provides a realistic opportunity for low and moderate income housing within convenient access to employment opportunities; and
2. That the agreement is consistent with sound comprehensive regional planning; and
3. That the receiving municipality's project plan is a feasible and viable means of achieving the purposes of the agreement, as determined by the Agency.

(d) The Council shall approve all regional contribution agreements by resolution; the Council shall set forth in its resolution a schedule of the contributions to be appropriated annually by the sending municipality. A copy of the adopted resolution shall be filed promptly with the Division of Local Government Services in the Department of Community Affairs and the Director shall thereafter not approve an annual budget of a sending municipality if it does not include appropriations necessary to meet the terms of the resolution.

### 5:91-12.4 Receiving municipalities

(a) Municipalities which may intend to enter into a regional contribution agreement as a receiving municipality shall notify the Council of their interest and of any proposed conditions or requirement for their participation.

1. Statements of intent submitted under this section shall be in the form of a resolution adopted by the municipality.
2. Statements of intent filed with the Council pursuant to this section shall not preclude any receiving municipality from negotiating with any potential sending municipality.
3. No receiving municipality shall be required to accept a greater number of low and moderate income units through an agreement than it has expressed a willingness to accept in its statement, but the number stated shall not be less than a reasonable minimal number of units, as determined by the Council, not to exceed 100.

(b) A municipality which intends to enter into a regional contribution agreement as a receiving municipality shall, before a sending municipality submits its proposed housing element and fair share plan to the Council, enter into a memorandum or understanding with the sending municipality which:

1. Outlines the terms and conditions of the proposed regional contribution agreement; and

2. Includes a schedule of when the project plan will be submitted to the agency for review as required by (c), below.

(c) A receiving municipality shall submit a proposed project plan, which shall be in such form and contain such information as the Agency may require, to the Agency pursuant to the schedule contained in the municipality's memorandum of understanding with the sending municipality. The Council or the Agency may impose time limitations for the submission of a project plan, or any updates or additions thereto.

(d) The Agency may undertake such review as is necessary, including scheduling meetings or hearings and requiring further information, studies or reports, in order to render a timely feasibility analysis of a proposed project for the Council's review. Failure of the receiving municipality to promptly or properly comply with the requirements of the Agency may result in the Agency's refusal to certify the feasibility of the proposed project.

#### 5:91-12.5 Enforcement of a regional contribution agreement

The Council shall take such actions as may be necessary to enforce a regional contribution agreement.

### SUBCHAPTER 13. MOTIONS

#### 5:91-13.1 Form of motion

An application to the Council for an order shall be by motion. A motion shall be by notice of motion in writing, unless the Council permits it to be made orally. Every motion shall state the time and place when it is to be presented to the Council, the grounds upon which it is made, the nature of the relief sought, and shall be accompanied by a proposed form of order. When a matter becomes a contested case, motions shall be pursuant to N.J.A.C. 1:1-9.

#### 5:91-13.2 Oral argument

A movant's request for oral argument shall be made either in his moving papers or reply. A respondent's request for oral argument shall be made in his answering papers. All requests for oral argument shall state the reasons therefore.

#### 5:91-13.3 Affidavits, briefs and supporting statements

Motions and answering papers shall be accompanied by all necessary supporting affidavits and briefs or supporting statements. All motions and answering papers shall be supported by affidavits for facts relied upon which are not of record or which are not the subject of official notice. Such affidavits shall set forth only facts to which the affiants are competent to testify. Properly verified copies of all papers or parts of papers referred to in such affidavits may be annexed thereto.

#### 5:91-13.4 Time for serving and filing motions and affidavits or briefs

A notice of motion shall be served and filed not later than 20 days before the time specified for the return date unless otherwise ordered by the Council. If a motion is supported by affidavit or brief, the affidavit or brief shall be served and filed with the motion. Any opposing affidavits or briefs, or any cross-motions, shall be served and filed not later than 10 days before the return date. Answers or responses to any opposing affidavits or briefs, or to any cross-motions, shall be served and filed not later than five days before the return date unless the Council otherwise orders.

#### 5:91-13.5 Orders

The Council shall render a decision on the motion by issuing the proposed order filed with the motion or by instructing the prevailing party to prepare and submit an appropriate order. If the Council has made findings of fact and conclusions of law explaining its disposition of the motion, the order shall so indicate.

## HEALTH

### (a)

#### DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

#### Certificate of Need: Hospital Policy Manual

#### Proposed Amendments, Repeals and New Rules:

#### N.J.A.C. 8:43E-1

Authority: N.J.S.A. 26:2H-1 et seq., specifically, 26:2H-5.

Proposal Number: PRN 1986-121.

Submit comments by **June 21, 1986** to:

John A. Calabria, Chief  
Health Planning Services  
New Jersey Department of Health  
Room 604  
CN 360  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The 1971 Health Care Facilities Planning Act (N.J.S.A. 26:2H-1 et seq., as amended) requires the Department to assure that New Jersey's hospital and related health care services are of the highest quality, of demonstrated need, efficiently provided, and properly utilized at a reasonable cost. To implement this public policy, Chapter 136 gave the Department of Health broad responsibilities in regulating the health care system through authorization of the Certificate of Need program.

The Department initially adopted **The Policy Manual for Planning and Certificate of Need Reviews of Health Care Facilities and Services within the State of New Jersey** (the Hospital Policy Manual) on April 27, 1977.

In view of the significant changes that have occurred in the health care system since 1977, the Department proposed the first major revisions to the existing rules in April 1985. In developing the proposed changes, the Commissioner obtained the recommendations and approval of the Statewide Health Coordinating Council (SHCC).

Following approval by the Health Care Administration Board, these proposed amendments to the Hospital Policy Manual were published for public comment purposes in the New Jersey Register on May 20, 1985. A number of written comments were received, principally from the hospital industry.

Although several changes were incorporated into the rules, the Department postponed submission of final rules to the Health Care Administration Board, pending further study of proposed federal limitations on reimbursement of hospital capital expenditures. Based on an analysis of the current level of debt financing of New Jersey hospitals, it was indicated that a major financial shortfall would occur within the industry unless changes were initiated in the way New Jersey allocated and reimbursed capital. Because the rules published in May 1985 inadequately addressed this issue, further study was indicated.

In February, a proposal was presented to the Health Care Administration Board (HCAB) and shared with the public, addressing the planning aspects of the Department's new Capital Policy. This included an annual Affordability Target for new capital and prioritization criteria. Discussions were initiated with the New Jersey Hospital Association in order to enable a consensus proposal to move forward to the HCAB for initial publication. At this time, the Department is withholding the publication of the Capital Policy criteria (8:43E-1.13 through 1.17) until this process is completed.

The overall purpose of the proposed rules is to identify policies, standards and criteria which shall be used by the Department of Health, the Statewide Health Coordinating Council, and the Health Systems Agencies to guide the planning and review of all Certificate of Need applications submitted by hospitals in the State of New Jersey. The rules will not govern Certificate of Need applications for projects in which separate and specific regulations have been adopted, such as Perinatal Services, (N.J.A.C. 8:33E-2) or Regional End-Stage Renal Disease Services (N.J.A.C. 8:33F). However, the rules do establish policies, standards and criteria pertaining to major hospital projects such as bed additions, modernization/renovation programs, acquisition of major moveable equipment, and mergers or relocations. The criteria include sections that specifically address issues of accessibility, planning, cost effectiveness, capital financing, and the minimum size of facilities.

The rules have been found since 1977 to generally be effective in their ability to insure the quality of care, regional accessibility, and adequate utilization of hospital services in New Jersey. The rapidly escalating costs of the health care system evidenced nationally have not been experienced to the same extent in this state. This can in part be attributed to the authority afforded to the Department of Health by these rules to regulate the rate of growth in hospital services and beds.

A 60-day comment period is being allowed in order to provide ample public review.

#### Social Impact

N.J.S.A. 26:2H-1 (as amended) recognizes as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of inhabitants of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services, the State Department of Health . . . shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and health care services, and health facility cost containment programs . . . ."

The New Jersey State Health Plan recognizes the underutilization of inpatient beds, specialty services, and expensive equipment as an important factor contributing to the rapidly escalating costs of health care. Regionalization of specialty services and equipment is viewed as an important mechanism for promoting health by improving the capabilities of services and quality of care offered, by improving the solvency of hospitals offering these expensive services, and by containing the rising costs of health care services.

The Department of Health has, through the Hospital Policy Manual, implemented public policy that has been directed towards both improving the health of residents and towards increasing the accessibility, acceptability, continuity, and quality of services provided to them. Through these rules, hospitals and related health care facilities submitting Certificate of Need applications must meet established standards and criteria addressing all of these concerns. Through adoption of the proposed amendments, the Department will update these standards to reflect changes both in the health care system and in public policy that have been evidenced since initial adoption in 1977. New standards are established addressing current practices in measuring efficiency, hospital mergers, and new equipment categories. Access to health care in particular is broadened considerably by rules in which Certificate of Need applicants must demonstrate the availability and accessibility of clinics and all existing and proposed services to medically indigent and medically underserved populations.

New Jersey's 99 general hospitals experienced almost 1.1 million admissions in 1983, resulting in a total of over 8.7 million patient days. The structure and design of the health care system as promoted by these rules thus has a significant impact on the lives and well-being of New Jersey's residents.

#### Economic Impact

Total annual capital reimbursement to New Jersey general acute care hospitals was \$322 million in 1984 and \$370 million in 1985, and is projected to be \$400 million in 1986 and at least \$500 million by 1990. These levels will be evident even if no other Certificate of Need applications are granted. Through application of the Hospital Policy Manual and other planning regulations, a significant number of proposed capital projects have been denied Certificates of Need by the Commissioner of Health; without such denials, the actual and projected levels of capital reimbursement would be even higher. The Hospital Policy Manual, therefore, provides the Department with an essential means to objectively assess and evaluate the need for the impact of proposed new capital and operating expenditures.

In 1984, the Governor's Advisory Committee on Capital Expenditures for Health Care Facilities recommended limiting aggregate capital reimbursement to a maximum of 7.5 percent of annual hospital expenditures. Since then, the federal Department of Health and Human Services has proposed an even stricter limit on capital reimbursement. The Department of Health estimates that, if implemented, the federal proposal would cost New Jersey hospitals at least \$100 million in lost reimbursement per year; the loss could go as high as \$250 million per year. Future policy proposals will address a restructuring of the health care delivery and financing systems to deal with whatever federal reimbursement shortfalls may actually materialize.

Maintaining an affordable health care system that addresses the real needs of New Jersey's residents for access to health care is essential. The proposed rules are critical to the Department's efforts to design a health delivery system that provides care that is of the highest quality, of demonstrated need, and both efficiently provided and properly utilized.

Full text of the proposal follows (additions shown in boldface thus; deletions shown in brackets [thus]).

#### CHAPTER 43E

### [POLICY MANUAL FOR PLANNING AND CERTIFICATE OF NEED REVIEWS OF HEALTH CARE FACILITIES AND SERVICES WITHIN THE STATE OF NEW JERSEY] CERTIFICATE OF NEED: HOSPITAL POLICY MANUAL

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 8:43E-1.1 Introduction

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

(d) The Department of Health has a major responsibility for the promotion of quality health services rendered in an efficient and economical manner and available to all citizens of the State. To ensure significant progress toward the achievement of this policy [goal] planning and Certificate of Need activities will be directed toward the provision of facilities and services which:

1. "Improve the health of residents of a health service area,
2. "Increase the accessibility (including overcoming geographic, architectural and transportation barriers), acceptability, continuity and quality of health services provided them;
3. "Restrain increases in the cost of providing them health services; and
4. "Prevent unnecessary duplication of health resources."<sup>4</sup>

##### 5. Reduce financial barriers to care.

(e) The general policies, standards and guidelines set forth in [this document] **these rules** are intended to provide substantive criteria for the planning, [development and review] **review and implementation** of health care facilities and services within the State of New Jersey.

(f) (No change.)

[(g) These policies, standards and guidelines shall also be used to guide the development of the State Medical Facilities Plan required under Title XVI of Public Law 93-641.]

(g) **This chapter is to be distinguished from the "Guidelines and Criteria for Submission of Applications for Certificate of Need" published by the New Jersey State Department of Health (N.J.A.C. 8:33-1 et seq.) which identifies the procedures, rules, and regulations which carry out the Certificate of Need program pursuant to N.J.S.A. 26:2H-1 et seq. (1971 Health Facilities Planning Act), Public Law 92-603 (Section 1122 of the Social Security Act) and Public Law 93-641 (the National Health Planning and Resources Development Act of 1974) as amended.**

[(h) This manual is to be distinguished from the "Guidelines and Criteria for Submission of Applications for Certificate of Need" published by the New Jersey Department of Health.]

(h) **This chapter presents substantive criteria for the planning of health care facilities and services as provided by hospitals within the State. These policies, standards and guidelines shall be applied in the review of proposed actions requiring Certificate of Need authorization.**

[(i) The latter document identifies the procedures, rules, and regulations to carry out N.J.S.A. 26:2H-1 et seq. (1971 Health Facilities Planning Act), Public Law 92-603 (section 1122 of the Social Security Act) and Public Law 93-641 (The National Health Planning and Resources Development Act of 1974).]

[(j) This document, on the other hand, presents substantive criteria for the planning of health care facilities and services within the State. It is these policies, standards and guidelines which shall be applied in the review of proposed actions requiring certificate of need authorization.]

[(k) One of the principal factors influencing enactment of Federal legislation requiring reviews of proposed capital expenditures is the rapidly escalating costs of health care. The provisions identified herein derive from a concern over the serious economic condition and are intended both to promote cost containment as well as to improve quality within the health care system of our State.]

##### 8:43E-1.2 General policies

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

[(c) No certificate of need shall be awarded to a hospital which does not have an accepted hospital long-range plan pursuant to N.J.A.C.

<sup>4</sup>P.L. 93-641, Section 1513(a)

8:31-16.1 by January 9, 1977, or the date agreed to by the Department of Health. The annual update shall be due January 31 every year. All other facilities obligated to file a long-range plan with the State pursuant to N.J.A.C. 8:31-16.1 shall be denied certificate of need approval until such time that they have complied with the requirements of this law. Except for applications requiring an administrative review, no certificate of need shall be issued if the subject of the application is not anticipated in the "certificate of need forecast" of the institution's most recently accepted long-range plan. Exceptions to the "forecast" can be made for applications of unusual merit particularly if they respond to other State and Federal policies, arise in response to emergency situations, or result from significant technological advances or unforeseen growth in volume.]

(c) **No certificate of need shall be awarded to a hospital that does not demonstrate that:**

1. **The medically underserved populations in its primary service area have access to all existing and proposed services, and**

2. **The hospital provides necessary outpatient clinics where these are determined needed in the area for medically underserved population groups.**

(d) [It is the policy of] The State of New Jersey [to] encourages planning which promotes:

1. [Is directed toward the] Achievement of national health planning goals and guidelines issued pursuant to section 1501 and priorities referenced in section 1502 of Public Law 93-641, "The National Health Planning and Resources Development Act of 1974: and **amendments thereto;**

2. [Promotes] Actions consistent with the New Jersey Health Plan, the State Medical Facilities Plan, and [other] departmental policies and regulations;

3. [Promotes and is] **Actions** consistent with the goals and objectives of the health systems plan for the health service area in which the proposed action is planned;

4. [Promotes] Prevention of disease through early intervention and the provision of primary care services, and encourages the continued development of alternative service modalities to substitute for inpatient hospital care and alternative facilities to substitute for hospital inpatient construction **as appropriate;**

5. **Regionalization of medical resources to achieve cost efficiencies and to enhance the quality of care as appropriate;**

[i. Special consideration in the awarding of certificate of need approvals shall be given to applicants which promote paragraphs 1 through 3 of this subsection.]

6. **Accessibility to and the availability of services to those persons unable to pay for services;**

7. **Reduction or elimination of environmental and occupational illness and disease.**

[(e) Institutions which engage in cooperative regional planning and which demonstrate that they are sharing their resources on a regional basis shall be given special consideration in the awarding of certificate of need.]

(e) **In making determinations on applications for certificate of need approval "there shall be taken into consideration (a) the availability of facilities or services which may serve as alternatives or substitutes, (b) the need for special equipment and services in the area, (c) the possible economies and improvement in services to be anticipated from the operation of joint central services, (d) the adequacy of financial resources and sources of present and future revenues, (e) the availability of sufficient manpower in the several professional disciplines, and (f) such other factors as may be established by regulation . . ."**

[(f) N.J.A.C. 8:31-16.1 shall be amended to add the following: Hospital long-range plans shall demonstrate efforts on the part of the institution to develop cooperative arrangements with other facilities in its area. These arrangements shall address but not be limited to the following:

1. The regionalization of specialty services;

2. Joint purchasing and shared services; and

3. Participation in the development of efficient discharge planning.]

(f) **Any health care facility which does not apply for a certificate of need and implements a project for which a certificate of need approval must be obtained, shall be determined to be unlawful. The Department shall follow procedures identified in N.J.A.C. 8:33 in enforcement of this chapter.**

[(g) Hospitals seeking certificate of need approval to add beds to an existing facility or to construct a new facility must demonstrate an efficient use of existing beds. Among the factors to be considered in assessing the efficient use of existing beds shall be included:

1. Demonstrated lengths of stay at or below the mean for its peer grouping as defined by Health Economics Services, New Jersey State Department of Health;

2. The quality of existing admissions scheduling procedures: Hospitals should strive toward the goal of scheduling up to 75 percent of elective patient admissions several weeks in advance of actual admission;

3. A description of the institution's experience of the previous year's pre-admission testing program presented, wherever possible, quantitatively. The institution's policies regarding pre-admission testing should accompany the description.

4. Documentation of efforts to keep at a minimum the length of time required to return the results of in-hospital testing;

5. Documentation of efforts by the hospital to operate an optimal utilization review program for all patients, including an efficient discharge program;

6. Documentation that the hospital is participating in its local PSRO activities;

7. A description of the alternatives to inpatient modalities that were considered by the hospital and why they were rejected.]

(g) **Each certificate of need application shall comply with the State Health Plan and all appropriate health planning and rate setting regulations adopted by the Department of Health and should also be in compliance with the Health Systems Plan of the health system agency in which the action is planned.**

[(h) Upon the recommendation by the appropriate health systems agency to the department to grant waivers from certain licensure standards, the full range of services required of each hospital by the Department of Health Licensure standards, does not have to be provided if the health systems agency can demonstrate to the Department that persons in the hospital's service area will have access to comparable services. The appropriate health systems agency is the one located in the health service area pursuant to Public Law 93-641 in which the hospital is located.]

(h) **The Department of Health shall give preference to applicants which:**

1. **Document existing working relationships with other area hospitals and health care facilities providing primary care services including but not limited to referral arrangements for regionalized services; and**

2. **Document the accessibility of services to persons who are unable to pay.**

(i) **The applicant must identify alternative approaches to the project which were considered and demonstrate in specific terms how the option selected, relative to all other alternatives, most effectively benefits the health care system through achieving capital and operational savings, increasing access, and/or improving quality of care.**

(j) **If a hospital has closed, ceased or not maintained operation of any of its beds, facilities, or services for a period of 18 months or more, a Certificate of Need shall be required to reopen such beds, facilities, or services.**

#### 8:43E-1.3 Definitions

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

"Acquisition" means the obtainment of a health care facility or service through purchase, lease, donation or other means which requires a Certificate of Need.

"Construction" means the erection, building, alternation, reconstruction, improvement, renovation, extension or modification of a health care facility, including its equipment, the inspection and supervision thereof; and the studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto.

"Debt service" means those funds allocated to the repayment of principal, depreciation, and interest as a result of the financing of a capital expenditure.

"Department" means the New Jersey Department of Health.

"Equity" means a voluntary non-operating asset contribution which will reduce the total size of the debt.

"Fixed equipment" means equipment which is attached to the physical plant of a facility.

"Guidelines" means those general factors to be considered in applying a given standard, or to guide decision-making in areas for which specific standards are not available or would not be appropriate.

"Health Systems Agency" means an officially recognized health systems agency formed under the provision of Federal Law 93-641, as amended and supplemented.

"Hospital Service Area" means the county of hospital location or that geographic area which can be determined through a methodology contained in the New Jersey State Medical Facilities Plan or its amendments to constitute a hospital service area.

“Incentive position” means that financial position, under Chapter 83 Rate Setting Regulations (N.J.A.C. 8:32B-3 and 4) which is achieved when a facility’s treatment costs in comparison to hospitals in the same peer group are below statewide averages.

“Major movable equipment” means equipment which generally is not attached to the physical plant of a facility and has for depreciation purposes a predetermined life.

“Medically underserved groups” means all population groups including racial and ethnic minorities, migrant workers, the handicapped, Medicaid recipients, women and families with incomes below 80 percent of the median income for either the state or the Standard Metropolitan Statistical Area in which they reside, and other identifiable segments of the population which currently fail to use health care services in numbers approximately proportionate to their presence in the population as adjusted to account for their need for such services.

“Modernization” means the alteration, expansion, major repair (to the extent permitted by regulations), remodeling, replacement, and renovation of existing buildings (including initial equipment thereof), and the replacement of obsolete equipment of existing buildings.

“Proposed capital expenditure” means the sum total of expenditures anticipated by the facility at the conclusion of a project, which includes expenditures by a facility acting as its own contractor, which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance.

“Replacement funding” is the amount of reimbursement as determined under Chapter 83 Rate Setting Regulations (NJAC 8:31B-3 and 4) which provides for replacement of capital facilities and fixed equipment.

“Relative length of stay index” means the analysis published by the Department which compares the average length of stay for an individual hospital within that hospital’s peer group controlling for casemix. The methodology for the relative length of stay index is contained in the official New Jersey State Health Plan, as amended, and shall be based on the most recent data collected by the Department.

“Standards” means the specific requirements that applicants must satisfy in developing applications for certificate of need approval. To the extent practicable, standards shall address measurable characteristics that such applications must meet.

8:43E-1.4 [Standards and guidelines for planning and certificate of need reviews of hospital facilities and services; generally] **Scope**

The standards and guidelines [defined herein] contained in this chapter shall apply to all hospitals licensed and regulated under N.J.S.A. 26:2H-1 et seq. and amendments thereto.

8:43E-1.5 Standards regarding minimum size; acute general hospitals

(a) The minimum size for an acute general hospital shall be 200 beds. This standard shall not apply to:

1. Facilities licensed for fewer than 200 beds at the time of adoption of this regulation; [unless a bed expansion is planned. Where there is a documented need for additional beds within a planning region, the preferred manner for authorizing bed additions shall be to add beds to an institution that is over 200 beds or will be brought up to 200 beds by the addition;]

2. Facilities of less than 200 beds proposing to expand to at least 200 beds, where the need for expansion is justified;

3. Facilities with less than 200 beds which are or will be [sponsored] merged and/or operated by full-service general acute hospitals with over a 200-bed capacity and which provide or will provide only those services which are necessary to meet the community’s need without duplication of service;

4. Facilities proposing renovations or improvements in its physical plant necessary to meet minimum State and Federal Life Safety Code requirements (A renovation plan with costs which equal or exceed the cost of replacement will be considered as a proposed for new construction and the policies which apply to new construction will apply to it);]

5. Facilities which have successfully reduced bed requirements by providing alternative ambulatory services or short-stay service programs, which as a consequence fall below the 200-bed minimum.]

OAL NOTE: See New Jersey Administrative Code for text of proposed repeal of N.J.A.C. 8:43E-1.6 through 8:43E-1.12. Proposed new rules follow.

8:43E-1.6 Standards regarding minimum size; obstetric services

The minimum size of an obstetric service shall be 20 beds unless waivers are granted pursuant to N.J.A.C. 8:33C “Certificate of Need: Perinatal Services.”

8:43E-1.7 Standards regarding minimum size; pediatric services

(a) The minimum size of a pediatric unit shall be 20 beds. Exceptions will be considered where it is documented that:

1. The distance to an alternate pediatric unit exceeds 20 miles; or,
2. At the proposed lower capacity, occupancy will exceed minimum occupancy standards identified at N.J.A.C. 8:43E-1.11, and the applicant demonstrates an appropriate level of care will be provided in a cost-effective manner.

8:43E-1.8 Limitations on approvals

Approval for construction, renovation, or purchase of a facility relates only to that project. No implicit approval for additional beds, services, or equipment can be implicitly or explicitly inferred from the approval.

8:43E-1.9 Standards regarding shelled space

Shelled space (any area of a facility built without the intent for immediate use) has generally not been proven to be cost effective. Projects proposing shelled space shall not be approved unless the applicant can demonstrate significant cost savings to both the institution and the health care system.

8:43E-1.10 Guidelines regarding bed need

(a) Any application for establishment of or expansion of licensed beds must demonstrate need for these beds in the proposed service area based upon needs assessment methodology identified in:

1. Adopted Department of Health planning regulations governing regionalization of the service(s); or
2. The State Health Plan, and amendments thereto; or
3. Planning documents as developed by the Department and the Statewide Health Coordinating Council.

(b) Where the applicant is proposing beds to support specialized services for which there are no methodologies referenced in the documents cited at N.J.A.C. 8:43E-1.10(a), the need for beds shall be documented by an analysis of scientific and medical data which demonstrates that beds for a new service are cost effective, beneficial to patients, accessible, of high quality, and could not be provided in a less costly setting. In addition, an applicant shall provide information demonstrating the need for beds by documenting estimates of:

1. Referrals from major referral sources, as reflected in letters of support; and
2. Projected admissions and average length of stay (the bases for these projections must be specifically identified in the application); and
3. Utilization based upon methodologies established by federal, regional, or other health planning or financing authorities; and
4. Occupancy level projections which shall be demonstrated to have achieved a minimum of 80 percent (for the beds proposed in the application) within the initial two years of full operation.

8:43E-1.11 Standards regarding occupancy rates

(a) For purposes of review of Certificate Need applications, the minimum and optimal occupancy rates based upon licensed beds for an acute general hospital, by service category, shall be:

	Minimum	Optimal
Medical/Surgical	80%	90%
Obstetrics	65%	85%
Pediatrics		
Units of less than 40 beds	65%	85%
Units of 40 to 79	70%	90%
Units of 80 beds or more	75%	90%
ICU/CCU	65%	85%
Psychiatric	75%	90%

(b) The level of excess beds within a hospital shall be that number of licensed beds, which, when deleted from a service, will allow a hospital to achieve minimum occupancy levels as identified in (a) above, for a period three years beyond the projected completion date of the project, defined as the “target year.” Utilization levels for the target year shall be based on utilization trends for the most recent 24 months for which data is available to the Department, applied forward to the target year from the most recent quarter of available data.

8:43E-1.12 Standards regarding addition of beds

(a) No certificate of need shall be approved where the applicant has not demonstrated compliance with the following:

1. In the previous 18 months, the applicant hospital must exceed both minimum occupancy rates for all existing services as well as optimal occupancy rates for the service being proposed for expansion;
2. The hospital must have an average length of stay which does not place it below one standard deviation of the mean on the Relative Length of Stay Index for its peer group;

3. In the previous 18 months, all acute care hospitals within the applicant's service area must exceed optimal occupancy levels within the service type of which expansion is being requested.

(b) Exceptions to (a)1 may be considered where:

1. The applicant is proposing to reduce licensed beds through conversion or decertification thereby demonstrating that occupancy levels will be in compliance with minimum standards at the completion of the project; or

2. The applicant can demonstrate that there will be a net bed reduction in its County resulting from cooperative planning with neighboring hospitals; or

3. The applicant can demonstrate additional bed need by documenting rapid changes in demographics or casemix as well as having evidenced appropriate increases in utilization over the previous 18 months. This exception will be considered only in areas where both the State Health Plan and the Health Systems Plan have projected a need for beds in the service(s) proposed for expansion.

(c) Exceptions to (a)3 may be considered where:

1. The applicant has demonstrated efficiencies of operation through:

i. An appropriate average length of stay. This shall be defined as a Medical/Surgical ALOS which keeps an institution above one standard deviation of the mean on the Relative Length of Stay Index for its peer group for the two previous years for which data is available; and,

ii. Maintaining an incentive position for both the cost center in the service being proposed for expansion and for the hospital overall, as determined by the Department; and

iii. Other standards of patient care efficiencies as may be developed by the Department.

2. The applicant has demonstrated an historical commitment to caring for the medically indigent.

OAL NOTE: See New Jersey Administrative Code for text of proposed repeal of N.J.A.C. 8:43E-1.13 through 8:43E-1.17. Repealed sections have been reserved.

OAL NOTE: See New Jersey Administrative Code for text of proposed repeal of N.J.A.C. 8:43E-1.18 through 8:43E-1.30. Proposed new rules follow.

#### 8:43E-1.18 Standards regarding equity contributions and financing

(a) Financing of hospital construction, modernization/renovation, or major moveable equipment projects requires a minimum equity contribution from the hospital of at least 15 percent of total project costs, including all financing and carrying charges. This equity requirement may be reduced by one half of one percent for each full percentage point the hospital uncompensated care percentage exceeds the statewide average uncompensated care percentage for acute care hospitals.

(b) All projects involving long-term financing of capital construction costs shall demonstrate use of the least-cost financing reasonably available.

(c) Financing arrangements for construction, expansion, renovation, or purchase of facilities shall not entail debt obligations of greater duration than the expected useful life of the assets financed.

(d) It shall be a condition of any approved Certificate of Need that capital reimbursement shall be predicted upon the higher of actual volume or volumes projected in the approved application.

(e) All applicants must demonstrate the financial feasibility of their proposed project, as measured by generally accepted measures such as the debt to equity ratio, the debt service coverage ratio, and the ratio of capital to operating costs.

#### 8:43E-1.19 Standards regarding the transfer of services from an acute care hospital

(a) The transfer of a service from one corporation to another, regardless of their relationship, requires a Certificate of Need application through procedures identified at N.J.A.C. 8:33.

(b) The facility or corporation transferring out the service must comply with the following criteria and conditions:

1. Implementation of the proposed transfer of service will not violate any bond covenant or any loan and security agreement between itself and the New Jersey Health Care Facility Financing Authority or any other financing agency.

2. The applicant must assure within the application that:

i. No portion of the operating or capital costs incurred by or related to the proposed service will be incorporated into rates approved for the acute care hospital transferring out the service.

ii. Any losses generated by this proposed service will not be used as a justification for increases in the rates of the acute care hospital transferring out the service.

3. The hospital must guarantee that services which are corporately and/or physically transferred from hospitals to other areas are accessible and available to all persons independent of their ability to pay with special attention given to medically underserved groups in the existing hospital service area. The hospital must document that public transportation is available to the aforementioned groups, and if it is not, the hospital must make arrangements to guarantee that transportation will be made available to those individuals.

(c) The facility or corporation receiving the new service must comply with the following criteria and conditions:

1. Any service transferred, in whole, must provide indigent care at the same level as provided for that same service in the two calendar years preceding the application or at a level commensurate with other hospitals in the area over the preceding two calendar years, whichever is greater.

2. Any service transferred in part must, together with the applicant hospital, provide in the aggregate the same level of indigent care as provided for that same service in the two years preceding the application or at a level commensurate with other hospitals in the area over the preceding two years, whichever is greater.

3. A quality assurance and review program for the health services must be provided and it must be documented that such a program will be implemented at the proposed service.

4. The hospital must guarantee that services which are corporately and/or physically transferred from hospitals to other areas are accessible and available to all persons independent of their ability to pay with special attention given to medically underserved groups in the existing hospital service area. The hospital must document that public transportation is available to the aforementioned groups, and if it is not, the hospital must take arrangements to guarantee that transportation will be made available to those individuals.

#### 8:43E-1.20 Standards regarding acquisition or replacement of major movable equipment

(a) No Certificate of Need shall be awarded for the acquisition or replacement of major movable equipment unless the applicant has demonstrated compliance with the following criteria:

1. Conformance with all applicable Department regulations for the proposed service;

2. For equipment categories not governed by existing Departmental regulation:

i. Projects involving addition of new equipment shall demonstrate need through:

(1) Documenting improved patient care as a result of such equipment; and

(2) Documenting adequate patient volume for cost-effectiveness and, if appropriate, operational cost savings.

(3) Where appropriate, documenting cooperative arrangements with area hospitals and other providers that will avoid duplication of services and ensure access to residents of the service area; and

(4) Documenting access to new equipment by persons who are unable to pay.

ii. Projects involving the replacement of existing major movable equipment shall demonstrate need through:

(1) Documenting historical operating volumes to warrant continued use of such equipment; and

(2) Documenting that the existing equipment has surpassed its estimated useful life expectancy; and

(3) Documenting operational inefficiencies of existing equipment through excessive downtime; and

(4) Documenting access to existing equipment by persons who are unable to pay.

(b) No Certificate of Need shall be awarded for the acquisition or replacement of major movable equipment unless the applicant has:

1. Documented use of least-cost financing;

2. Documented efficient operation of the area in which the proposed equipment is utilized through maintaining:

i. An overall incentive position for the hospital or an incentive position in the cost center where the equipment will be utilized; or

ii. Documentation (through most recently available financial reports submitted to the Department) that the costs for patients on whom the equipment is predominantly utilized are not above statewide standards.

3. Where method of acquisition is through lease arrangement, it must be demonstrated that the proposed lease arrangement is more cost-effective than purchase, giving consideration to maintenance costs, warranties, and other related costs, as well as to the imputed value of a 15 percent equity contribution.

(c) Exceptions to (b)2 above can be made where the applicant submits an acceptable plan which demonstrates that efficiencies will result in costs which are consistent with statewide standards or will enable the hospital to maintain an overall and specific no cost center incentive position.

(d) Equity contributions to the financing of the project must meet minimum requirements identified at N.J.A.C. 8:43E-1.18(a). In projects proposing both acquisition of major moveable equipment and modernization/renovation, equity contributions must be pro-rated equally between equipment costs and costs of the remainder of the project.

#### 8:43E-1.21 Guideline regarding single-bedded rooms

No Certificate of Need proposing the construction, modernization, renovation, or change in licensed bed capacity of acute care beds shall be approved where the total number of single-bedded rooms at the completion of the project exceeds 15 percent of the total complement of licensed medical/surgical, pediatric, and obstetric/gynecological beds. These shall be exclusive of isolation rooms as determined necessary by Departmental licensure standards.

#### 8:43E-1.22 Guidelines regarding Intensive Care/Critical Care Units

(a) No Certificate of Need for ICU/CCU beds shall be approved where the total ICU/CCU bed capacity at the completion of the proposed project shall exceed 10 percent of total medical/surgical and obstetric/gynecological bed complement.

(b) Exceptions to (a) above shall be considered where the applicant is a major teaching hospital and justifies such additional capacity as necessary to provision of Department approved or designated tertiary care services.

(c) Pediatric Intensive Care beds shall be provided on a regionalized basis. No facility shall offer such services without Certificate of Need approval. No Certificate of Need shall be awarded unless need is demonstrated through casemix, delivery of tertiary care services, and establishment of cooperative arrangements with area hospitals.

#### 8:43E-1.23 Guidelines regarding outpatient clinics

(a) Applicants for any bed-related Certificate of Need must demonstrate the availability of follow-up care for all discharged patients and all residents of the service area either through direct provision of such services by the hospital or its physicians, or through formal written linkages with other health care providers in the area.

(b) An applicant for expanded outpatient clinic services shall demonstrate competitive pricing with all other providers of similar services in the area, and shall demonstrate that there will not be a negative economic impact on the health care system.

#### 8:43E-1.24 Standards regarding energy conservation projects

(a) Any Certificate of Need application related to energy conservation must address, but not be limited to, the following items, which shall be considered indicators of the cost effectiveness of the project:

1. Description of measures to be undertaken and why these measures were chosen over possible alternatives;
2. Cost of design, acquisition, and installation;
3. Useful life of the measure to be undertaken;
4. Effect of this measure on operating and maintenance costs;
5. Salvage value at the end of useful life of the measure to be undertaken;
6. Annual energy consumption by appropriate category for the three previous years;
7. Estimated energy consumption and energy savings at least three years into the future or until the pay-back year, which ever is longer;
8. Financial estimates of the savings of the energy costs and savings at least three years into the future or until the pay-back year, which ever is longer.

#### 8:43E-1.25 Standards regarding location of hospitals

(a) Any Certificate of Need application proposing the relocation, major new construction at an existing hospital by a new corporate entity, or new construction of an acute care hospital must meet all criteria in this chapter and must specifically address the following:

1. No Certificate of Need shall be awarded to a hospital proposing to relocate, unless it demonstrates compliance with the following criteria:
  - i. There must be a bed need in the area of proposed location for all services to be relocated;
  - ii. The applicant must demonstrate that there are sufficient resources in the former area to ensure access to care to the former patient population;
  - iii. The proposed site must be accessible to patients of the newly defined service area both economically and in terms of driving time and public transportation, where available;
  - iv. All alternatives have been considered and the proposed project is responsive to identified health needs and represents the most cost-effective course of action to meet those needs;

v. The applicant must at a minimum demonstrate long term reductions in total health system costs.

2. No Certificate of Need shall be awarded for the construction of a new hospital unless compliance with the following criteria has been demonstrated:

- i. Bed need in the area has been documented for each proposed service;
- ii. The hospital at its proposed location must be physically and economically accessible to patients of the defined services area;
- iii. All hospitals located within a 25-mile radius of the proposed location shall have occupancy levels which exceed optimal levels as defined in 8:43E-1.11 for the previous two calendar years;
- iv. The applicant must demonstrate that the proposed project represents the most cost-effective approach to meeting identified health care needs of the area.

#### 8:43E-1.26 Standards regarding costs of parking garages

(a) Where a hospital voluntarily submits an application for a Certificate of Need to purchase, construct, modernize, renovate or expand a parking garage, it must provide full written documentation of the purchase, construction and/or renovation costs of the proposed unit including land acquisition and building demolition related thereto. The applicant should include both capital and operating costs. Projections of anticipated revenues and costs along with the significant assumptions for the first two years of operation, (or the break-even year, whichever is later) should be incorporated into the Certificate of Need application.

(b) The costs of purchase, construction, renovation, expansion and operation of the proposed parking garage shall be fully underwritten by charges to users, as the costs will not be financed, directly or indirectly, in whole or in part by charges to patients. An exception can be made for employee benefits if the applicant demonstrates necessity and if such costs are determined to be reasonable in comparison to all hospitals.

#### 8:43E-1.27 Standards regarding medical arts building

(a) Where a hospital voluntarily submits an application for a Certificate of Need to purchase, construct, modernize, renovate or expand a medical arts building it shall provide full written documentation of the purchase, construction and renovation costs of the proposed unit. The applicant shall include both capital and operating costs, including personnel, maintenance agreements, and related expenses. Projections of anticipated revenues and costs (and the assumptions for these projections) during the first two years (or break-even year, whichever is later) of operation shall be supplied with the Certificate of Need application.

(b) The costs of the purchase, construction, renovation, expansion and operation of the proposed medical arts building shall be wholly underwritten by charges to users. An exception can be made when documentation is provided and the Department determines that it is cost effective to locate hospital services in the building.

#### 8:43E-1.28 Standards regarding accessibility

The applicant must demonstrate compliance with all accessibility criteria as identified in 8:33-2.1, "Certificate of Need Application and Review Process."

#### 8:43E-1.29 Guidelines regarding multi-hospital arrangements

(a) Hospitals which propose the merger, acquisition, or joint establishment of corporate structures with any other licensed hospital(s) for the purpose of providing a health care service, or where a change in ownership Certificate of Need application is filed by a licensed hospital, it shall demonstrate in the Certificate of Need that:

1. Cost efficiencies will be effected and will result in significant net operational savings to the participating hospitals and to the health care system as a whole; and
2. Where the project is related to inpatient services, a reduction of all excess bed capacity, as determined under N.J.A.C. 8:43E-1.11, will result for all participating hospitals through decertification or conversion of acute care beds; and
3. Duplication of services will be eliminated where appropriate through the proposed merger, acquisition or corporate restructuring.

#### 8:43E-1.30 Standards regarding relocation or closure of services

No Certificate of Need shall be awarded for the relocation or closure of services unless the applicant has demonstrated compliance with N.J.A.C. 8:33-2.1(a)5.

OAL NOTE: See New Jersey Administrative Code for text of proposed repeal of N.J.A.C. 8:43E-1.31 through 8:43-1.37. Repealed sections have been reserved.

# HUMAN SERVICES

## (a)

### Medically Needy Supplement Introduction, Case Processing, Non-Financial Eligibility Factors, Income and Resource Eligibility, Medical Spend-Down, and Other Administrative Requirements

#### Proposed New Rules: N.J.A.C. 10:70

Authority: N.J.S.A. 30:4D-3i(8)6g, 7, a, b, c; 1902(a)(10) of the Social Security Act; 42 CFR 435 Subpart D.

Proposal Number: PRN 1986-140.

The agency proposal follows:

#### Summary

The proposed new rule concerns recent amendments (P.L. 1985, c.371, approved November 25, 1985 and amended by P.L. 1985, c.510, approved January 21, 1986) to the New Jersey Medicaid Legislation establishing additional coverage under Title XIX (Medicaid) for individuals whose income and/or resources may exceed the categorical level and who may require assistance in paying for medical care and services. The proposal describes the basic criteria by which eligibility may be established under the Medically Needy Program. The topics covered in this manual include the application process, financial and non-financial factors governing eligibility, medical spend-down, and other administrative requirements. The proposed new rule, which shall be cited in the New Jersey Administrative Code as N.J.A.C. 10:70, contains references to existing chapters in the New Jersey Administrative Code which appear in Subtitle L and are prepared and maintained by the Division of Public Welfare. These references are:

N.J.A.C. 10:81—Public Assistance Manual (PAM)

N.J.A.C. 10:82—Assistance Standards Handbook

N.J.A.C. 10:94—Medicaid Only Manual

There are three coverage groups in the Medically Needy Program. These coverage groups are: pregnant women; needy children under the age of 21; and aged, blind, or disabled. For purposes of determining eligibility, the pregnant women and needy children are placed in the AFDC (Aid to Families with Dependent Children) related category; the aged, blind, and disabled are placed in the SSI (Supplemental Security Income) related category.

The twenty-one county welfare agencies and/or boards of social services will determine eligibility for both the prospective and retroactive periods. Individuals who wish to apply for coverage under the Medically Needy Program will complete the application form PA-1G for the SSI-related categories. Those individuals in the AFDC-related categories will complete the application form PA-1J. The county welfare agency will make a "disposition of the application" as indicated in the text (10:70-2.1(d)) below. The five methods of disposing of an application appear in 10:70-2.1(e) below. There are two types of approval in the Medically Needy Program. If an individual is below the income and resource levels and meets all other program requirements, they will be approved and able to obtain those Title XIX services available to their respective coverage group. If an individual meets all the requirements of the Medically Needy Program except that the countable income of the budget unit exceeds the Medically Needy Income Levels (MNIL), then the individual will be eligible pending medical spend-down.

If the application is denied, the individual would have the right to a hearing. The application may also be dismissed or withdrawn based on action (or inaction) of the applicant.

In order to establish eligibility, the individual must meet the nonfinancial eligibility factors (see N.J.A.C. 10:70-3), as well as the income and resource standards that appear in N.J.A.C. 10:70-4, 5 respectively.

#### Non-Financial Eligibility Factors:

Significant non-financial factors affecting eligibility are the requirement that an individual be a United States citizen or lawfully admitted alien (see 10:70-3.1(a)2 below). The individual must be a resident of New Jersey. Needy women are eligible during the term of a medically verified pregnancy regardless of age. Needy children under the age of 21 may be eligible regardless of certain requirements associated with categorical assistance, such as deprivation of parental support or care, school attendance, residence with parent(s) or other caretaker relative(s), or participation in a program of training or employment such as WIN (Work Incentive Program). With respect to the SSI-related categories, the non-

financial factors are basically the same as the existing SSI (Supplemental Security Income) standards. Needy persons 65 years of age or older must present proof of age. Needy persons who are blind must meet the standard that appears in 10:70-3.4(c)2 below. Needy persons who are disabled must meet the definition contained in 10:70-3.4(c)3 below. Individuals who are receiving Social Security disability benefits are presumed to be disabled (for the Medically Needy Program). Individuals who are not receiving Social Security disability benefits will have their disability determined by the Division of Public Welfare.

Another non-financial factor which is critical to the eligibility process is the concept of the budget unit (see 10:70-3.5), which is defined as those persons whose income and resources are counted in the determination of eligibility for persons applying for or eligible for the Medically Needy Program. The budget unit size has a direct relationship to the MNIL standard.

For AFDC-related persons the budget unit is comprised in the following manner. A pregnant woman shall comprise a budget unit of two. If the pregnant woman is married and living with her husband, the budget unit shall consist of three persons. The woman's natural or adoptive children shall be included in the budget unit. For children under the age of 21, siblings may be included in the budget unit. For children who reside with the stepparent, the stepparent may or may not be included in the budget unit (please refer to 10:70-3.5(b) below).

For SSI-related persons the budget unit is composed in the following manner. An aged, blind, or disabled adult not living with his or her spouse shall be a budget unit of one. An aged, blind, or disabled person living with his or her spouse shall be a budget unit of two. For a blind or disabled child under the age of 21, the budget unit shall include the child's natural or adoptive parents.

#### Income:

Income eligibility for the Medically Needy Program may be established by two methods. If the countable income of the budget unit is equal to or less than the MNIL appropriate for the budget unit size, income eligibility is established. For cases in which the countable income of the budget unit exceeds the appropriate MNIL, income eligibility may only be established through spend-down (see N.J.A.C. 10:70-6). The formula for computing the MNIL appears at N.J.A.C. 10:70-4.1(a)1 below. The figures resulting from this computation are as follows:

MEDICALLY NEEDED INCOME LEVELS	
Budget Unit Size	Medically Needy Income Level
1	\$ 333
2	416
3	541
4	625
5	708
6	783
7	866
8	950
9	1,033
10	1,108
For each additional	add \$83

The following example illustrates the use of the chart. An aged, blind, or disabled adult living alone is a budget unit of one. If the individual's income is \$333 per month, the income standard for Medically Needy would be met. If the individual's income were \$433 per month, then the individual would have to "spend-down" by \$600 (\$100 per month times six months) in order to meet the MNIL standard. Countable income in SSI-related cases is described in N.J.A.C. 10:94-5. There are two exceptions for SSI-related cases. The disregard of cost-of-living increases in Social Security benefits, and the deeming of the income of an alien's sponsor do not apply in the Medically Needy Program.

Countable income in AFDC-related cases is described in N.J.A.C. 10:82. However, there are computations in AFDC-related cash assistance cases that will not be made in the Medically Needy Program. These computations are the \$30.00 and one-third disregard, the deeming of stepparent income, and the deeming of income of an alien's sponsor. The rule does provide for considering the available income of a legally responsible relative (10:70-4.5(d)), and for the deeming of income (10:70-4.6(d)). There are two eligibility periods—one for retroactive eligibility, and one for prospective eligibility. The retroactive eligibility period is the three calendar months immediately preceding the month in which application for benefits is made. The prospective eligibility period is the six calendar months beginning with the month of application. In order to determine income for the six month prospective period, the county welfare agencies

and/or board of social service will establish the best estimate of income based on the average of the budget unit's income for the two month period prior to the date of application. Income changes during the six month period require an adjustment to the countable income for the month of the income change and a new best estimate for the remaining months of the eligibility period.

**Resources:**

Individuals must meet the resource eligibility limits set forth in 10:70-5.1(a) below. Periodic increases in the resource limits have been provided for. For AFDC-related cases, the resource provisions of AFDC (see N.J.A.C. 10:82) apply, except for deeming of the resources of an alien's sponsor and the AFDC provisions allowing establishment of eligibility pending liquidation of non-exempt resources. For SSI-related cases, the resource provisions of the Medicaid Only program (see N.J.A.C. 10:94) apply, except for the deeming of the resources of an alien's sponsor. The transfer of resource provisions governing AFDC-related and SSI-related cases apply to the Medically Needy Program. Individuals who have access resources will not be eligible for the Medically Needy Program. The spend-down provisions do not apply to resources; they apply only to income.

**Medical Spend-Down:**

The provisions for establishing eligibility under medical spend-down are described in 10:70-6.1. Medical spend-down is the process whereby the excess countable income of a budget unit is offset by the allowable incurred medical expenses of the budget unit. Spend-down liability for the six month budget period is the total amount by which the countable income of the budget unit exceeds the monthly MNIL for the full six month period. (Please refer to the chart listed above and the example following it.) In order to take advantage of the spend-down provisions, the individual must present documentation that they have received necessary or remedial services recognized under state law and for which they, or a member of the budget unit, has an express obligation for payment. In determining eligibility under medical spend-down, expenses are applied in the following order:

1. Health insurance premiums, deductibles or co-insurance charges incurred by a member of the budget unit;
2. Expenses incurred by the members of the budget unit for allowable medical expenses for services not covered under the Medically Needy Program;
3. Expenses incurred by budget unit members, who are also members of a Medically Needy eligibility category, for services covered by the Medically Needy Program.

For the retroactive eligibility period, a monthly spend-down liability is established for each of the three months. Income eligibility is established for any month in which the allowable incurred medical expenses of the budget unit exceed the spend-down liability established for that month. For the prospective eligibility period, a six-month spend-down liability is established. The six-month spend-down liability shall be the amount by which the countable income of the budget unit exceeds the budget unit's MNIL for the six-month period. Eligibility for the Medically Needy Program is established effective the day of the month in which the spend-down is met and expires the last day of the sixth month of the budget period. "Special" claims may be considered for payment. "Special" claims are defined as covered Medically Needy services rendered during the period beginning the first day of the month in which the spend-down is met, up to and including the day spend-down is met, which have not been used to meet the spend-down (see N.J.A.C. 10:49-1.1). Individuals who do not qualify under the medical spend-down provisions would be ineligible for the Medically Needy Program.

In summation, this new rule describes the criteria, both financial and non-financial, that will be used in determining eligibility for the Medically Needy Program.

**Social Impact**

The rule impacts on New Jersey residents whose income and/or resources are in excess of the categorical assistance standards but below the limits established for Medically Needy or whose medical bills allow them to spend-down to the Medically Needy limits. Persons who are found eligible under the Medically Needy standards are entitled to have the specified covered services reimbursed by the New Jersey Medicaid Program.

The rule impacts on virtually all health care providers in New Jersey. Providers who render services to Medicaid patients must comply with all program requirements.

The Prudential Insurance Company and Blue Cross/Blue Shield of New Jersey, will be responsible for claim processing.

The twenty-one county welfare agencies and/or boards of social services will be responsible for determining eligibility both prospectively and retroactively.

Since both recipients and providers are entitled to hearings, there may be an increase in the number of contested cases sent to the Office of Administrative Law.

**Economic Impact**

The estimated cost of the Medically Needy Program for State Fiscal Year 1987 is approximately 85 million dollars (federal-state share combined).

There is no cost to the Medicaid patient for services provided by the Medically Needy Program. However, in order to be declared eligible for the Medically Needy Program some individuals will have to meet the "spend-down" requirements contained in this rule.

There is no change in provider reimbursement associated with this proposal.

Full text of the proposed new rule follows:

CHAPTER 70  
MEDICALLY NEEDED PROGRAM

SUBCHAPTER 1. INTRODUCTION

10:70-1.1 Program scope

(a) The Medically Needy Program, enacted by P.L. 1985, Chapter 371, extends limited Medicaid program benefits to certain groups of medically needy persons whose income and/or resources exceeds the standards for the Medicaid program but are within the standards for the Medically Needy Program, or whose income exceeds the standards for the Medically Needy Program but is insufficient to meet their medical expenses as determined in this chapter.

(b) Eligibility for the Medically Needy Program is limited to the following eligibility groups within the family and adult eligibility categories:

1. AFDC-related:
  - i. Pregnant women; and
  - ii. Children under 21 years of age.
2. SSI-related:
  - i. Persons 65 years of age or older;
  - ii. Persons who are blind; and
  - iii. Persons who are disabled.

(c) The medical services covered under the Medically Needy Program are limited by eligibility group and by the spend-down provisions of subchapter 6. All restrictions and limitations on services applicable to the Medicaid program apply to services for the Medically Needy. The services covered under the Medically Needy Program (by eligibility group) are described in N.J.A.C. 10:49-1.4(b).

(d) Retroactive eligibility for the Medically Needy Program is available beginning with the third month prior to the month of application, if members of an eligibility group have incurred expenses for covered services within that period which have not yet been paid and the members would have been eligible for the Medically Needy coverage in the month in which the services were received. Members of the eligibility group need not be eligible for the program at the time of application in order to be eligible for retroactive eligibility. Application for retroactive eligibility may be made on behalf of a deceased person so long as the person was alive during a portion of the retroactive eligibility period and he or she incurred medical expenses for covered services.

1. Retroactive coverage is not available for any period prior to July 1, 1986, the effective date of the Medically Needy Program.

10:70-1.2 Purpose of the Medically Needy Manual

- (a) Purpose of the regulations contained within this chapter is to:
1. Set forth eligibility for the Medically Needy Program;
  2. Establish policy for calculating spend-down liability for persons whose income exceeds the Medically Needy Income Level; and
  3. Specify the rights and responsibilities of program applicants and eligible persons.

(b) Circumstances which are neither specifically nor generally addressed in these regulations shall be referred to designated staff of the Division of Medical Assistance and Health Services for resolution.

(c) The director of the county welfare agency shall assign copies of this manual to administrative staff, all Medically Needy Program staff working with applicants and recipients, and to social services staff as appropriate and shall ensure that each staff member is thoroughly familiar with its contents in order to apply the required policy and procedures consistently.

(d) The Division of Medical Assistance and Health Services will issue revisions to the Manual as necessary. It is the responsibility of each holder of the Manual to maintain its accuracy by inserting new material and removing obsolete pages promptly.

1. At least one administrative copy of all obsolete pages of the Manual must be maintained by the county welfare agency.

(e) This manual is a public document. It is important that all copies in use be absolutely accurate and up-to-date. The manual is available as follows:

1. Copies are available in the State office of the Division of Medical Assistance and Health Services and in each county welfare agency office for examination or review during regular office hours.

2. Specific policy material necessary for an applicant or recipient or his or her representative to determine whether a fair hearing is to be requested or to prepare for a fair hearing shall be provided to such persons without charge.

3. All public and university libraries which have agreed to keep the manual up-to-date will have a copy available under their regulations.

4. Each legal services office will be furnished with a copy of this manual.

5. Welfare, social service, and other nonprofit organizations will be furnished with a copy of this manual at no cost upon an official written request on agency letterhead to the Division of Medical Assistance and Health Services.

6. A current up-to-date copy of the manual or any part of it is available from the Division of Medical Assistance and Health Services at the cost of printing and mailing to anyone who requests it in writing.

#### 10:70-1.3 Administrative organization

The Medically Needy Program is administered by the county welfare agencies under the supervision of the Division of Medical Assistance and Health Services of the Department of Human Services.

#### 10:70-1.4 Principles of administration

(a) The following principles of administration apply in the Medically Needy Program.

1. Any individual who believes he or she is eligible shall be afforded an opportunity to make application (or reapplication) for the Medically Needy Program without delay.

2. Program applicants or eligible persons are the primary source of information concerning program eligibility and spend-down liability. The county welfare agency shall, when necessary, in the process of determining eligibility and spend-down liability, use secondary sources of information with the knowledge and consent of the applicant or eligible person.

3. There shall be strict adherence to law and complete conformity with regulations and administrative policy. Requirements other than those established by law or regulation shall not be imposed as a condition of receiving assistance under the Medically Needy Program.

#### 10:70-1.5 Confidentiality of information

(a) No member, officer, or employee of the county welfare agency shall produce or disclose any confidential information to any person, except as authorized below.

1. Information considered confidential includes, but is not limited to, the following:

- i. Names and addresses;
- ii. Medical services provided;
- iii. Social and economic conditions or circumstances;
- iv. County welfare agency evaluation of personal information; and
- v. Medical data, including diagnosis and past history of disease or disability.

2. The county welfare agency may disclose information concerning an applicant or eligible person to persons and agencies directly related to the administration of Medicaid, including the Medically Needy Program. Persons and agencies directly related to program administration are those that are properly authorized to be involved in the:

- i. Establishment of eligibility;
- ii. Determination of the amount and scope of medical assistance;
- iii. Provision of services for recipients; and
- iv. Conduct or assisting in the conduct of an investigation, prosecution, or civil or criminal proceeding related to the Medically Needy Program.

3. The county agency may release information whenever the applicant or eligible person waives confidentiality, but only to the extent authorized by the waiver.

4. If a court issues a subpoena for a case record or any other confidential information or for any agency representative to testify concerning an applicant or eligible person, the county welfare agency, personally or through counsel, shall make a statement substantially as follows:

i. "Under provisions of the Social Security Act, information concerning applicants and recipients of Medical Assistance must be restricted to persons directly connected with the administration of such assistance. The authorities of the Federal government have advised that this includes a requirement of nondisclosure of such information in response to a subpoena. If a disclosure is made of this information, either by personal testimony or by production of records, this is considered nonconformance with Federal requirements and may subject the State to loss of Federal financial participation in the Medical Assistance program."

5. In no instance is it intended that any officer or employee of the agency place him or herself in contempt of court through refusal to follow the orders of a court. However, the above action as appropriate shall be taken in all instances, and a report of the results shall be entered in the case record.

6. Pertinent information and records may be released in conjunction with an administrative hearing conducted by the Office of Administrative Law regarding action or inaction by the county welfare agency affecting an applicant's or eligible person's eligibility or entitlement under the Medically Needy Program.

#### 10:70-1.6 Materials distributed to program applicants or eligible persons

(a) All materials distributed to applicants or eligible persons must:

1. Directly relate to the administration of the Medicaid program;
2. Have no political implications;
3. Contain names only of individuals directly connected with the administration of the Medicaid program; and
4. Identify those individuals only in their official capacity with the State or the county welfare agency.

(b) The county welfare agency must not distribute materials such as "holiday" greetings, general public announcements, voting information, or alien registration notices.

(c) The county welfare agency may distribute materials directly related to the health and welfare of program applicants and eligible persons, such as announcements of free medical examinations, availability of surplus food, and consumer protection information.

#### 10:70-1.7 Nondiscrimination

(a) Title VI of the Federal Civil Rights Act of 1964 (Public Law 88-352) and Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the ground of race, color, national origin, or handicap in the administration of any program for which Federal funds are received. Strict compliance with the provisions of this Act any regulations based thereon is required as a condition of eligibility to receive Federal funds for assistance programs administered through the county welfare agencies. These principles apply to the Medically Needy Program in New Jersey.

1. The county welfare agency shall inform all staff members of their obligations in regard to Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

2. All persons seeking medical assistance shall be informed of Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

3. All persons seeking or receiving medical assistance shall be afforded an opportunity to file a complaint alleging discrimination on the ground of race, color, national origin, or handicap. Such complaints may be filed directly with the Regional Manager, U.S. Department of Health and Human Services, Office of Civil Rights, Federal Plaza, New York, New York 10007, or with the Director, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625.

4. In any instance in which a complaint of alleged discrimination is filed with a State or county agency, the complaint shall be forwarded immediately to the Director, Division of Medical Assistance and Health Services. The Director, upon receipt of any such complaint, will take whatever action he or she deems appropriate to the situation. This action may include, but is not limited to, the securing of reports from whatever sources may have knowledge pertinent to the situation and referral to the Division of Civil Rights of the New Jersey Department of Law and Public Safety, for investigation, evaluation, and recommendation by that agency.

5. The county welfare agency shall afford full cooperation in the investigation of complaints of discrimination as may be requested by the Federal Department of Health and Human Services, the Division of Medical Assistance and Health Services, or the Division of Civil Rights.

6. The Director, Division of Medical Assistance and Health Services, will be responsible for all final determinations as to whether or not the fact of discrimination has been established and for all decisions as to the

disposition of the complaint. In arriving at such determinations, the Director will take into consideration relevant decisions or actions on the part of a court or governmental agency.

7. Each county welfare agency shall comply with the decision of the Director of the Division of Medical Assistance and Health Services on any complaint of discrimination, including the imposition of disciplinary action as found necessary and reasonable in the case of discrimination by a staff member.

#### 10:70-1.8 Assignment of medical support rights

(a) Any person who applies for the Medically Needy Program, by virtue of the application for benefits, is deemed to have assigned to the Commissioner of the Department of Human Services any rights to support for the purpose of medical care as determined by a court or administrative order and any rights to payment for care from any third party. It is required that program applicants and recipients cooperate in the identification of and the obtaining of any such rights.

1. The county welfare agency shall advise applicants and recipients of the terms of the assignment and the consequences thereto.

### SUBCHAPTER 2. CASE PROCESSING

#### 10:70-2.1 Application

(a) Application for the Medically Needy Program shall be accomplished by the completion and signing of Form PA-1G for SSI-related cases and Form PA-1J for AFDC-related cases, as well as, any addenda to those forms as prescribed by the Division of Medical Assistance and Health Services.

1. Application for the Program shall be executed by:

- i. A parent, caretaker relative, or guardian for cases with children under the age of 21 residing with a parent or caretaker relative;
- ii. A child age 18 or older when not residing with a parent or caretaker relative;
- iii. A pregnant woman age 18 or older;
- iv. The parent or caretaker relative of a disabled or blind child;
- v. The adult seeking benefits as aged, blind, or disabled.

2. For cases which, because of confinement, illness, incapacity, disability, or lack of competence of the person(s) required to execute the application, and for children who not yet attained the age of 18, the application may be executed on such person's behalf by:

- i. A relative by blood or marriage;
- ii. A staff member of a public or private welfare agency of which the person seeking program benefits is a client, who has been designated by the agency to so act;
- iii. The attorney or physician of the person seeking program benefits;
- iv. A staff member of an institution or facility in which the person is receiving care, who has been designated by the institutional facility to so act.

3. A legal guardian shall be recognized as an authorized agent to initiate an application for the Medically Needy Program.

(b) The county welfare agency, under policies and procedures established by the Division of Medical Assistance and Health Services, has the direct responsibility in the application process to:

1. Inform applicants of the purpose and the eligibility requirements for the Medically Needy Program, their rights and responsibilities under the Program, and of their right to a fair hearing;
2. Receive applications and review them for completeness, consistency, and reasonableness;
3. Assist program applicants in exploring their eligibility for program benefits;
4. Make known to program applicants, the appropriate resources and services both within the agency and the community;
5. Assure the prompt and accurate submission of eligibility data to the Medicaid Status File for eligible persons and prompt notification to ineligible persons of the reasons for their ineligibility.

(c) As part of the application process, the program applicant has the responsibility to:

1. Complete, with assistance from the county welfare agency as needed, any forms required as part of the application process;
2. Assist the county welfare agency in securing evidence that verifies or collaborates his or her statements;
3. Report any change in circumstances that may affect program eligibility or amount of benefits;
4. Provide the county welfare agency evidence, as requested, of incurred medical expenses and liability for payment;
5. If applicable, submit to examinations or tests and provide such medical and other evidence as may be necessary to determine disability or blindness.

(d) With the exceptions noted below, disposition of an application for the Medically Needy Program must be accomplished within 30 days of the date of application (or the date of the inquiry form PA-1C, if applicable) for AFDC-related cases and for persons applying on the basis of being aged. The disposition standard for the disabled and blind is 60 days from the date of application (or the date of the inquiry form PA-1C, if applicable).

1. "Disposition of the application" means the official determination by the county welfare agency of application approval or rejection.

2. Disposition of the application may exceed the processing standards when substantially reliable evidence of eligibility or entitlement is lacking at the end of the processing period. In such circumstances, the application may be continued in pending status. The county welfare agency shall document that the delay in application processing resulted from one of the following:

- i. Circumstances wholly within the applicant's control;
- ii. A determination to afford the applicant, whose evidence of eligibility or entitlement is inconclusive, additional time to provide sufficient evidence of eligibility before final action on his or her application;
- iii. An administrative or other emergency that could not reasonably be avoided; or
- iv. Circumstances wholly outside the control of both the applicant and the county welfare agency.

3. When application processing is delayed beyond the processing standards, the county welfare agency shall provide to the program applicant written notification prior to the expiration of the processing period setting forth the specific reasons for the delay.

4. Each county welfare agency director shall establish appropriate operational controls to expedite the processing of applications and assure maximum compliance with the processing standards.

i. The county welfare agency will maintain control records which will identify all pending applications which did not meet the processing standards and the reason therefore. That record shall be adequate to make possible the preparation of reports of such information as may be requested by the Division of Medical Assistance and Health Services.

(e) The following actions on an application qualify as disposition of an application for purposes of the processing standards:

1. Approved: The applicant(s) has been determined eligible for participation in the Medically Needy Program;
2. Denied: The applicant(s) has been determined ineligible for participation in the Medically Needy Program;
3. Eligible pending spend-down: The applicant(s) is eligible for participation in the Medically Needy Program in all respects except that the countable income of the budget unit exceeds the medically needy income levels. Eligibility for program benefits may be established through medical spend-downs (see subchapter 6);
4. Dismissed: A decision by the county welfare agency that the application process need not be completed because:
  - i. The death of the applicant(s) (the application process must be completed if there are unpaid medical bills for covered services incurred in either the retroactive coverage period or subsequent to program application or inquiry);
  - ii. The applicant(s) cannot be located;
  - iii. The application was registered in error;
  - iv. The applicant(s) moved out of the State during the application process (see N.J.A.C. 10:70-2.4 for a move to another county within the State during the application process).
5. Withdrawn: The applicant(s) request that eligibility for the Medically Needy Program not be considered further.

(f) The county welfare agency is required by law (N.J.S.A. 30:6-1) to report to the Department of Human Services, Commission for the Blind and Visually Impaired, every individual coming to its attention who is known to be, or is believed likely to become, permanently blind. Such information shall be reported on a form prescribed by the Commission.

#### 10:70-2.2 Interview

A personal face-to-face interview with the program applicant(s) or the authorized agent is required as part of the process of determining program eligibility.

#### 10:70-2.3 Collateral verification

(a) Collateral verification is the use of third-party information (both documentary and nondocumentary) from agencies or individuals other than members of the applicant's household to substantiate the accuracy of statements made on the application and during the interview.

1. Program applicants have the primary responsibility for providing verification of factors of eligibility. If it would be difficult or impossible

for the applicants to provide necessary verification in a timely manner, the county welfare agency shall provide assistance in obtaining the evidence.

2. In the absence of credible verification of all eligibility factors, eligibility for the Medically Needy Program may not be established.

#### 10:70-2.4 Case transfer

(a) When individuals move permanently to another county within the State, responsibility for the case shall be transferred in accordance with the provisions of this section. The case transfer shall be accomplished in a manner so not to adversely affect the rights of any individual to program entitlement. In a case transfer, the existing eligibility period, as established by the county of origin, does not change.

1. A temporary visit out-of-county shall not be considered to be a change of county residence until the visit has continued for longer than three calendar months.

(b) The county of origin shall initiate and the receiving county shall, on request, immediately undertake an investigation of the circumstances surrounding the move. If the move is permanent, each county shall execute its respective responsibilities in accordance with (c) and (d) below.

(c) For persons who move from the county in which application for the Medically Needy Program is made prior to a determination of eligibility or ineligibility:

1. The county in which the application was made has the responsibility to:

- i. Complete the eligibility determination process;
- ii. If determined eligible for the Program, add the eligible persons to the Medicaid Status File (MSF) with the correct effective date of Medically Needy eligibility and the new address (in the receiving county); and
- iii. If the case is determined eligible, within five working days of the eligibility determination, transfer the case record material to the receiving county in accordance with (e)1.i. through iv. below.

2. The receiving county has the responsibility to:

- i. Communicate promptly with the client and/or the client's authorized agent upon receipt of the case material to advise of continued program entitlement or when the case has been determined eligible pending spend-down, to advise that the client should report to the receiving county upon achieving spend-down liability; and
- ii. Immediately notify the county of origin, in writing, of the date the case material was received.

(d) For cases which are eligible for the Medically Needy Program and those which have been determined eligible pending spend-down:

1. The county of origin has the responsibility to:

- i. Transfer, within five working days from the date it is notified of the actual move, a copy of pertinent case material to the receiving county. Such material shall include, at a minimum, a copy of the first application and most recent application form (including all verification), Social Security numbers, the new address in the receiving county, and, if applicable, all necessary spend-down information.
- ii. Send with the above case material, a cover letter specifying that the case is being transferred and requesting written acknowledgment of receipt;
- iii. Forward promptly to the receiving county, copies of any other material mutually identified as necessary for case administration; and
- iv. Notify the receiving county if there will be a delay in providing any case material described in i. or iii. above.

2. The receiving county has the responsibility to:

- i. Communicate promptly with the client and/or the client's authorized representative when case material is received;
- ii. Immediately notify the county of origin, in writing, of the date the initial case material was received;
- iii. Review eligibility for the case. If questions regarding case eligibility exist because of information provided by the county of origin, that county shall be consulted for resolution of the issues;
- iv. Accept responsibility for the case (provided application to transfer has been made) effective for the next month if the initial case material has been received before the 10th of the month;
- v. Accept responsibility for the case (provided application to transfer has been made) for the second month after the month of receipt of initial case material when such material is received on or after the 10th of the month;
- vi. Update the Medicaid Status File (MSF), as necessary. If the case is determined eligible for Medically Needy in the receiving county, there shall be no interruption of entitlement. If the case is determined ineligible for Medically Needy in the receiving county, eligibility shall be terminated, subject to timely and adequate notice, and the previously eligible persons deleted from the MSF; and

vii. Notify the county of origin of the date eligibility for Medically Needy will begin or will be terminated in the receiving county;

(e) Any case for which the transfer procedures in (b) through (d) above are not begun within 30 days of the date of original referral, shall be promptly reported by the county of origin to the Division of Medical Assistance and Health Services by letter, setting forth the pertinent available facts.

#### 10:70-2.5 Redetermination of eligibility

(a) Eligibility for the Medically Needy Program shall be redetermined as follows:

1. When required, on the basis of information the county welfare agency has obtained previously about anticipated changes in the case situation, or when additional information is necessary to adjust the best estimate of income when such income is subject to significant fluctuation:

2. Promptly, after information is obtained by the county welfare agency which indicates changes in the case circumstances that may affect program eligibility or the amount of benefits received under the Program;

3. For cases not subject to medical spend-down, a full redetermination of program eligibility, no later than six months from the date eligibility was first established or from the date of the last full redetermination;

4. For cases subject to spend-down, a full redetermination of program eligibility, by the completion of the current prospective six-month budget period.

(b) For redeterminations of eligibility required by (a)1 and 2 above, the completion of a new application form and a face-to-face interview are required only if, on the basis of the information obtained, in conjunction with existing case information, the county welfare agency is unable to arrive at a decision regarding eligibility or ineligibility.

(c) Full redeterminations of eligibility ((a)3 and 4 above) require the completion of a new application form and a face-to-face interview. All factors of eligibility subject to change (with the exception of disability and blindness factors; see N.J.A.C. 10:70-2.6) must be verified or re-verified.

(d) The responsibilities of the client(s) in the process of eligibility redetermination are the same as those delineated for program applicants at N.J.A.C. 10:70-2.1(c).

#### 10:70-2.6 Redetermination of medical factors

(a) Except for persons receiving Social Security benefits as a result of disability or blindness, the factors of disability and blindness will be redetermined at intervals established by the Division of Public Welfare, Bureau of Medical Affairs.

(b) Any person whose eligibility for the Program is based on a determination of disability or blindness is required to submit to examinations or tests and provide medical and other evidence necessary for the purpose of determining continued disability or blindness.

#### 10:70-2.7 Post-application client responsibilities

(a) Upon a determination of eligibility for the Medically Needy Program, members of the eligibility group (or their authorized agent) have on-going responsibility for the reporting of changes in circumstances and the provision of information as delineated at N.J.S.A. 10:70-2.1(c). Further, as requested by the county welfare agency during the eligibility period, additional or updated information must be provided. At any time the county agency lacks sufficient information to confirm continuing program eligibility because of the unwillingness of the eligibility group to provide necessary information, the agency shall commence action to terminate the case.

### SUBCHAPTER 3. NONFINANCIAL ELIGIBILITY FACTORS

#### 10:70-3.1 General provisions

(a) Eligibility must be established in relation to each legal requirement of the Medically Needy Program to provide a valid basis for granting or denying medical assistance.

(b) The applicant's statements regarding his or her eligibility, as set forth in application form, are evidence. The statements must be consistent and meet prudent tests of credibility. Incomplete or questionable statements shall be supplemented and substantiated by corroborative evidence from other pertinent sources, either documentary or nondocumentary.

1. Documentary sources of evidence present factual information recorded at some previous date by a disinterested party and filed as part of a record. Examples: certificates, legal papers, insurance policies, licenses, bills, receipts, notices of RSDI benefits, and so forth.

2. Nondocumentary sources of evidence are factual oral statements, which appear to be reliable, made by individuals based on their observation and personal knowledge of applicant's circumstances.

#### 10:70-3.2 Citizenship

(a) In order to be eligible for the Medically Needy Program, an individual must be a citizen of the United States or an alien lawfully admitted for permanent residence or permanently residing in the United States under color of law.

1. The term "citizen of the United States" includes person born in Puerto Rico, Guam, the Virgin Islands, Swains Island, American Samoa, and the Northern Mariana Islands.

2. The following aliens shall be considered lawfully admitted for permanent residence for purposes of establishing eligibility for the Medically Needy Program:

i. An alien lawfully admitted for permanent residence as an immigrant pursuant to sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act;

ii. An alien who entered the United States prior to June 30, 1948, or some later date as required by law, and has continuously maintained residency in the United States since then, and is not eligible for citizenship but is considered to be lawfully admitted for permanent residence as a result of an exercise of discretion by the United States Attorney General pursuant to section 249 of the Immigration and Nationality Act;

iii. An alien qualified for conditional entry after March 31, 1980 because of persecution or fear of persecution on account of race, religion, or political opinion pursuant to section 207 (formerly section 203(a)(7)) of the Immigration and Nationality Act;

iv. An alien who qualifies for conditional entry prior to April 1, 1980 pursuant to former section 203(1)(7) of the Immigration and Nationality Act;

v. An alien granted asylum through an exercise of discretion by the United States Attorney General pursuant section 208 of the Immigration and Nationality Act;

vi. An alien lawfully present in the United States as a result of an exercise of discretion by the United States Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 212(d)(5) of the Immigration and Nationality Act, or as a grant of parole by the United States Attorney General; and

vii. An alien living within the United States to whom the United States Attorney General has withheld deportation pursuant to section 243 of the Immigration and Nationality Act because of the judgment of the United States Attorney General that the alien would otherwise be subject to persecution on account of race, religion, or political opinion.

#### 10:70-3.3 Residency

(a) In order to be eligible for the Medically Needy Program, an individual must be a resident of the State of New Jersey. State residence shall be determined in accordance with the regulations at N.J.A.C. 10:94-3.5, 3.7, and 3.8.

#### 10:70-3.4 Eligibility group criteria

(a) Eligibility for the Medically Needy Program is limited to groups of persons within two specified eligibility categories. An individual must meet the definition of one of the categories below to be eligible for the Medically Needy Program.

(b) AFDC-related: The following eligibility groups are within the AFDC-related eligibility category:

1. Pregnant women: Needy women of any age during the term of a medically verified pregnancy.

2. Children under the age of 21: Needy children under the age of 21.

i. Children under the age of 21 may be eligible regardless of: Parental deprivation; school attendance; emancipation; residence with parent(s) or other caretaker relative(s); or Work Incentive program (WIN) or other AFDC employment or training requirements.

ii. A child may be eligible for program benefits when temporarily absent from his or her family in accordance with the provisions of N.J.A.C. 10:81-3.32 through 3.34.

(c) SSI-related: The following eligibility groups are within the SSI-related eligibility category:

1. Aged: Needy persons aged 65 years of age or older.

2. Blind: Needy persons who are statutorily blind. Statutory blindness is central visual acuity of 20/200 or less in the better eye with the use of correcting lens. An eye which has a limitation in the field of vision so that the widest diameter of the visual field subtends at an angle no greater than 20 degrees is considered to have a central visual acuity of 20/200 or less.

i. Persons who are receiving Social Security disability benefits as a result of blindness are presumed to be blind for purposes of this program.

ii. Except for persons described in i. above, the determination of statutory blindness is responsibility of the Division of Public Welfare, Bureau of Medical Affairs, Medical Review Team.

3. Disabled: Needy persons who are disabled. Disability is the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. The severity of impairment must be such that the individual is unable to do his or her previous work or any other substantial gainful activity which exists in the national economy. In the determination of a person's ability to do any other work, residual functional capacity, age, education, and work experience are considered.

i. Disability for children under the age of 18 is any medically determinable physical or mental impairment which compares in severity to an impairment that would make an adult disabled.

ii. Persons who are receiving Social Security disability benefits are presumed to be disabled for purposes of this program.

iii. Except for persons described in ii. above, the determination of disability is the responsibility of the Division of Public Welfare, Bureau of Medical Affairs, Medical Review Team.

(d) Under certain circumstances, an individual may be considered for eligibility under both the SSI-related and AFDC-related categories (for example, a blind child under the age of 21). Such an individual may select the category under which he or she wishes to be considered for program eligibility upon being advised by the county welfare agency of the option and the consequences thereof.

#### 10:70-3.5 Budget unit

(a) The term "budget unit" means those persons whose income and resources are counted in the determination of eligibility for persons applying for or eligible for the Medically Needy Program. Incurred medical expenses of all members of the budget unit are applied in meeting spend-down liability when applicable (see N.J.A.C. 10:70-6). Only those members of the budget unit who are either SSI-related or AFDC-related (see N.J.A.C. 10:70-3.4) may qualify for coverage under the Medically Needy Program.

(b) For AFDC-related persons (pregnant women and children under the age of 21), the budget unit shall be constituted as follows:

1. A pregnant woman shall comprise a budget unit of two. If the pregnant woman is married and living with her husband, the budget unit shall consist of three persons. The woman's natural or adoptive children under the age of 21, living in the same household, shall be included in the budget unit. If the pregnant woman is under the age of 21 and resides in the same household as her natural or adoptive parents, the parents shall be included in the budget unit.

2. For children under the age of 21, the budget unit shall be composed of all blood-related or adoptive brothers and sisters under the age of 21 living in the same household, as well as the natural or adoptive parent(s) of the children when living in the same household.

i. In the event the children under the age of 21 reside with a stepparent, the stepparent may be included in the budget unit. If the stepparent is included in the budget unit, his or her income and resources will be included in the determination of Medically Needy eligibility and his or her medical expenses will apply in the determination of spend-down liability, if applicable. If the stepparent is not to be included in the budget unit, his or her income, resources, and medical expenses will not be included in the determination of Medically Needy eligibility.

ii. The option of including or not including the stepparent in the budget unit, and the consequences thereof, shall be fully explained to program applicants so that an informed decision may be made.

3. Any person who is in receipt of AFDC or SSI or who has applied for and been found eligible for regular Medicaid benefits related to those programs shall not be included in the budget unit of an AFDC-related case. Any person whose income and resources have been deemed to an eligible SSI recipient shall likewise not be included in the budget unit.

(c) For SSI-related persons (aged, blind, and disabled individuals), the budget unit shall be constituted as follows:

1. An aged, blind, or disabled adult not living with his or her spouse is a budget unit of one regardless of the number of other persons (related or unrelated) living in the same household.

2. An aged, blind, or disabled adult living with his or her spouse (whether or not the spouse is program eligible) is a budget unit of 2 regardless of other persons (related or unrelated) living in the same household (see N.J.A.C. 10:70-4.6(d)1 for an exception to this rule in circumstances involving an SSI-related child).

3. For a blind or disabled child (under the age of 21), the budget unit shall include the child and his or her natural or adoptive parent(s) with whom the child is living.

4. For circumstances in which more than one sibling residing in the same household with their parent(s) apply as SSI-related, the budget unit

size will depend on the process of deeming of income. Budget unit composition must be developed in conjunction with rules at N.J.A.C. 10:70-4.6.

5. Any person who is in receipt of AFDC or SSI or who has applied for and been found eligible for regular Medicaid benefits related to those programs shall not be included in the budget unit of an SSI-related case.

6. When one or more siblings of a Medically Needy SSI-related child apply for and are found eligible for the Medically Needy Program as AFDC-related, the SSI-related child will be considered in a budget unit of one. (Parental income and resources will be considered toward the AFDC-related children only.)

(d) In family groups living in the same household, some of the members may qualify as SSI-related and others as AFDC-related. The family's choice of persons for whom Medically Needy benefits are sought will vary the composition of the budget unit and affect eligibility for the program. Available options shall be fully explained to the family by the county welfare agency so that the family may make an informed decision regarding application options.

#### 10:70-3.6 Third party liability

Program applicants and recipients are required to identify to the county welfare agency any third party (individual, entity, or program) that is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or recipient.

#### 10:70-3.7 Eligibility under other Medicaid categories

Eligibility for the Medically Needy Program will not be established for any individual who is eligible for Medicaid Only, Medicaid Special, Medicaid for the Unborn, or extended Medicaid benefits resulting from the previous receipt of AFDC. Such individuals are eligible for payment of covered medical services under the categorically needy Medicaid program.

#### 10:70-3.8 Persons sanctioned under AFDC rules

(a) Persons who are ineligible for AFDC due to the imposition of a sanction of ineligibility in that program may be eligible for the Medically Needy Program (with the exception below) without regard to the sanction.

1. Any person ineligible for AFDC solely as a result of being on strike is likewise ineligible for the Medically Needy Program. Because caretaker relatives are not eligible for the Medically Needy Program, participation in a strike by the caretaker relative will not affect the eligibility of children applying for the Medically Needy Program.

2. See N.J.A.C. 10:70-4.5(c) for persons ineligible for AFDC due to a period of ineligibility imposed as a result of the receipt of lump sum income.

#### 10:70-3.9 Application for other benefits

(a) As a condition of eligibility for the Medically Needy Program, applicants and recipients are required to take all necessary steps to obtain any annuities, pensions, retirement and disability benefits to which they are entitled, unless they can show good cause for not doing so. Applicants and recipients must avail themselves of any health insurance available to the budget unit at no cost, such as coverage provided at no cost by an employer.

1. Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensation and pensions, Social Security benefits, unemployment compensation.

#### 10:70-3.10 Inmates of public institutions

(a) Any person who is an inmate of a public institution is ineligible for the Medically Needy Program.

(b) Any person who is incarcerated in a Federal, State, or local correctional facility (prison, jail, detention center, reformatory, etc.) is not eligible for Medically Needy Program benefits.

### SUBCHAPTER 4. INCOME ELIGIBILITY

#### 10:70-4.1 Medically Needy Income Levels

(a) Income eligibility for the Medically Needy Program may be established by two methods. If the countable income of the budget unit (as determined in this subchapter) is equal to or less than the Medically Needy Income Level (MNIL) appropriate for the budget unit size, income eligibility is established and the eligible persons are entitled to Medically Needy program payment for covered services. For cases in which the countable income of the budget unit exceeds the appropriate MNIL, income eligibility may only be established through medical spend-down (see N.J.A.C. 10:70-6).

1. The monthly MNIL for budget units consisting of two to ten persons shall be based on the AFDC-C and -F allowance standards (as set forth at N.J.A.C. 10:82-1.2(c)). The allowance standard for the eligible unit size

corresponding to the budget unit size will be multiplied by 1.333. The result of this computation shall be multiplied by 12 and the result rounded up to the next nearest \$100.00. After rounding, the amount shall be divided by 12. Any cents resulting from this calculation are dropped and the remainder is the monthly MNIL.

2. To establish the monthly MNIL for budget units of more than twelve persons, the calculation in 1. above shall be applied to the AFDC-C and -F increment applicable for each additional person in eligible units of more than 10 persons (see N.J.A.C. 10:82-1.2(c)). The resulting amount for each additional budget unit member shall be added to the monthly MNIL for ten persons.

3. For budget units of one person, the AFDC-C and -F allowance standard for two persons shall be reduced by the increment for each additional person applicable to eligible units of more than ten persons (see N.J.A.C. 10:82-1.2(c)). The result of this computation shall be calculated as in 1. above. The resulting amount is the monthly MNIL for one person.

#### 10:70-4.2 Eligibility periods

(a) The retroactive eligibility period is the three calendar months immediately preceding the month in which application for benefits is made.

(b) The prospective eligibility period is the six calendar months beginning with the month of application. Once established, the prospective eligibility period will not be changed unless the case becomes ineligible for the Medically Needy Program during the eligibility period. Upon reapplication for the program, a new prospective eligibility period will be established.

1. Eligibility for the program does not extend beyond the end of the eligibility period. Continuation of program benefits is contingent upon a redetermination of all factors of eligibility (see N.J.A.C. 10:70-2.5).

#### 10:70-4.3 Computing income for six-month prospective period

(a) The county welfare agency shall establish the best estimate of income that will be available in the six-month prospective eligibility period.

1. The best estimate of income shall be based on an average of the budget unit's income for the full two-month period prior to the date of application. Adjustments shall be made in the estimated income to reflect changes in income that either have occurred or are reasonably anticipated to occur which would affect countable income for the prospective budget period. Once established, the best estimate of monthly income shall be applied to each of the six months of the budget period. If the income for the full six-month period is less than or equal to the MNIL for the six-month period, eligibility for program benefits has been established. If the income for the period exceeds the six-month MNIL, eligibility for program benefits may be established through the medical spend-down process.

2. Income changes during the six-month eligibility period require an adjustment to the countable income for the month of the income change and a new best estimate of income must be established for the remaining months of the eligibility period must be established if the change in income will continue.

i. For a case not subject to medical spend-down, an increase in countable income for the remaining months of the eligibility period, will result in the establishment of a spend-down liability if the income for those months exceeds the MNIL for the remaining months.

ii. For a case which has been determined eligible pending spend-down, changes in income during the eligibility period require a recomputation of spend-down liability for the eligibility period which may increase or decrease the liability of the budget unit. If a decrease in income is sufficient to reduce the budget unit's income below the six-month MNIL, eligibility is established without a spend-down liability for the remaining months of the eligibility period.

iii. For a case which has met the spend-down liability during the eligibility period, the recomputation of income for the remaining months of the eligibility period will result in the establishment of an additional spend-down liability if the countable income for the remaining months exceeds the MNIL for those months. Eligibility for the months in which the previously computed liability was met will not be retroactively affected by the new liability established for the remaining months of the eligibility period.

#### 10:70-4.4 Computing income for retroactive period

(a) In determining income eligibility for the retroactive eligibility period, countable income actually received in each month of the three-month period shall be compared to the budget unit's monthly MNIL for the same month. If the countable income for a month is less than or equal to the MNIL, eligibility for program benefits for that month has been

established. If the income for a month exceeds the MNIL for that month, eligibility for program benefits may be established through the spend-down process (see N.J.A.C. 10:70-6).

10:70-4.5 Countable income: AFDC-related cases

(a) Except as specified below, countable income for AFDC-related cases shall be determined in accordance with regulations applicable to income in the AFDC-C program (see N.J.A.C. 10:82).

1. The maximum income limits as provided for at N.J.A.C. 10:82-1.2(d) do not apply.

2. The \$30.00 and the one-third disregard of earned income at N.J.A.C. 10:82-2.8(a)3 and 10:82-4.4(c) do not apply.

3. The deeming of stepparent income at N.J.A.C. 10:82-2.9(d) does not apply. See N.J.A.C. 10:70-3.5(b)2 regarding inclusion or exclusion of the stepparent from the budget unit.

4. The deeming of income of an alien's sponsor at N.J.A.C. 10:82-3.13 does not apply.

(b) Nonrecurring lump sum income received by an AFDC-related budget unit shall be counted as income in the month received and any portion retained shall be counted as a resource in subsequent months. The receipt of such income will require a recomputation of income eligibility for the remaining months of the eligibility period.

(c) Any person who received AFDC or Medicaid based on AFDC rules and became ineligible for such assistance because of a period of ineligibility imposed as a result of the provisions of N.J.A.C. 10:82-4.15 shall likewise be ineligible for the Medically Needy Program for the same period as determined in AFDC. Once imposed, the period of ineligibility may only be reduced in accordance with the provisions of N.J.A.C. 10:82-4.15(a)5.

(d) For AFDC-related cases the following persons are legally responsible relatives to members of the AFDC-related eligibility group: parents of a child under the age of 18; parents of a child aged 18 to 21 unless the child is him or herself a parent; and the spouse of any member of the eligibility group. When a legally responsible relative resides in the same household as the member of the eligibility group, income of the legally responsible relative is counted in accordance with the structure of the budget unit and no additional evaluation of the relative is required. When the eligible group member does not reside in the same household as the legally responsible relative, the county welfare agency shall pursue support from such relative in accordance with the provisions of N.J.A.C. 10:82-3.8 et seq.

1. Except when the legally responsible relative resides in the same household as the member of the eligibility group, income of the relative shall be counted only to the extent that the income is actually available.

10:70-4.6 Countable income: SSI-related cases

(a) Except as specified below, countable income for SSI-related cases shall be determined in accordance with regulations applicable to income in Medicaid Only—Aged, Blind, and Disabled (see N.J.A.C. 10:94-5).

1. The disregard of cost-of-living increases in Social Security benefits provided for in N.J.A.C. 10:94-5.3(a)7x. and xi. do not apply in the Medically Needy Program.

2. The deeming of the income of an alien's sponsor as provided for at N.J.A.C. 10:94-5.7 does not apply.

(b) Nonrecurring lump sum income received by an SSI-related budget unit shall be counted as income in the month received and any portion retained shall be counted as a resource in subsequent months. The receipt of such income will require a recomputation of eligibility for the remaining months of the eligibility period.

(c) In the following circumstances, an SSI-related case will have the value of in-kind support and maintenance counted as unearned income.

1. Any SSI-related adult, who would in accordance with rules at N.J.A.C. 10:94-5.6(c) be determined to be "living in the household of another", shall be considered to have unearned income in the amount specified at N.J.A.C. 10:94-5.4(a)12 less \$20.00. The amount of income so assigned is not rebuttable.

2. Any SSI-related person other than those addressed in 1. above, to whom food, clothing, or shelter is given or paid for by someone other than by a spouse, a parent, or a minor child residing in the same household, shall be presumed to receive in-kind support and maintenance. The presumed value of the support and maintenance will be the values specified at N.J.A.C. 10:94-5.4(a)12. The presumed value so assigned may be rebutted in accordance with provisions of that subsection.

(d) In accordance with the rules at N.J.A.C. 10:94-5.5, the income of an eligible spouse shall be deemed to the eligible spouse when they are residing in the same household. Income of an SSI-related child's parent(s) residing in the same household shall be deemed available to the child

in the determination of eligibility for Medically Needy benefits. Income shall not be deemed from any person whose income is counted in determining income eligibility for an AFDC-related case which is eligible for the Medically Needy Program.

1. When an ineligible spouse's income must be deemed to both an SSI-related spouse and an SSI-related child, the income of the ineligible spouse is deemed to the SSI-related spouse to the extent that the total income of the SSI-related spouse equals the MNIL for two persons. The excess income of the ineligible spouse is deemed to the SSI-related child. The eligibility of the SSI-related child is based on a budget unit of two persons consisting of the SSI-related child and the ineligible spouse.

2. When parental income must be deemed to more than one SSI-related child, income shall be deemed in accordance with the following model based on two SSI-related children. Income shall be deemed as follows: Income to child A is deemed to the extent that the child's total income equals the MNIL for a budget unit of one person. The remaining deemed income shall be deemed to child B. Child A's eligibility will be based on a budget unit of one person and child B's eligibility will be based on a budget unit of two or three (depending on whether the income of one or two parents is deemed). For additional SSI-related children, deeming of income would be to the MNIL for one person each additional child and only one of the SSI-related children will be considered in a budget unit of more than one.

SUBCHAPTER 5. RESOURCE ELIGIBILITY

10:70-5.1 Resource eligibility limits

(a) Eligibility for the Medically Needy Program does not exist for any month in which the total value of a budget unit's countable resources exceeds the limits below:

Budget Unit Size	1	2	3	4	5	Each Additional
Before 1/1/87	\$3,400	\$5,100	\$5,200	\$5,300	\$5,400	\$100
1/1/87-12/31/87	3,600	5,400	5,500	5,600	5,700	100
1/1/88-12/31/88	3,800	5,700	5,800	5,900	6,000	100
1/1/89 and after	4,000	6,000	6,100	6,200	6,300	100

10:70-5.2 AFDC-related cases

For AFDC-related cases, the resource provisions of AFDC (see N.J.A.C. 10:82) apply in determining countable resources.

1. AFDC provisions requiring the deeming of the resources of an alien's sponsor do not apply in the determination of resource eligibility for the Medically Needy Program.

2. AFDC provisions allowing the establishment of eligibility pending the liquidation of nonexempt resources (N.J.A.C. 10:82-3.6) do not apply in the determination of resource eligibility for the Medically Needy Program. All nonexempt property shall be counted in the determination of resource eligibility.

10:70-5.3 SSI-related cases

(a) For SSI-related cases, the resource provisions of the Medicaid Only (Aged, Blind, and Disabled) program shall apply in the determining of countable resources for the Medically Needy Program.

1. Medicaid Only provisions requiring the deeming of the resources of an alien's sponsor (N.J.A.C. 10:94-4.6(f)) do not apply in the Medically Needy Program.

(b) The provisions relating to deeming of resources found at N.J.A.C. 10:94-4.6 apply in SSI-related cases. In the deeming of resources from one parent to a child, the countable parental resource in excess of the medically needy resource limit for a budget unit of one person shall be deemed to the child. When the resources of two parents must be deemed to the child, countable parental resources in excess of the medically needy resource limit for a budget unit of two persons shall be deemed to the child.

10:70-5.4 Transfer of resources

(a) For AFDC-related cases, the AFDC policy regarding the transfer of resources to qualify for benefits (N.J.A.C. 10:81-3.38(c)) shall apply to all members of the budget unit.

(b) For SSI-related cases, the Medicaid Only Program policy regarding the transfer of resources (N.J.A.C. 10:94-4.7) shall apply to all members of the budget unit.

SUBCHAPTER 6. MEDICAL SPEND-DOWN

10:70-6.1 Eligibility under medical spend-down

(a) Persons who are eligible in all respects for the Medically Needy Program, except that the countable income of the budget unit as de-

terminated in subchapter 4 exceeds the medically needy income level, may establish eligibility for payment of covered services benefits through medical spend-down.

1. Medical spend-down is a process whereby the excess countable income of a budget unit is offset by the allowable incurred medical expenses of the budget unit.

2. Spend-down liability is the amount by which the countable income of the budget unit exceeds the medically needy income level as determined under the provisions of this subchapter.

(b) The retroactive eligibility period is the three calendar months immediately preceding the month in which application for benefits is made. For each of the three months, a monthly spend-down liability is established. The monthly spend-down liability shall be the amount by which actual countable income of the budget unit for that month exceeds the medically needy income level for that month.

1. Within the retroactive eligibility period, income eligibility is established for any month in which the allowable incurred medical expenses of the budget unit exceed the spend-down liability established for that month.

2. Eligibility for payment of covered services is established effective with the first day of each or any month in which the allowable incurred medical expenses of the budget unit exceed the spend-down liability only for those claims for services that are not covered under the Medically Needy Program and were not used to meet spend-down liability. (Note: the effective date to be entered in the Medicaid Status File is the day after the day that spend-down liability is met.)

(c) Except for retroactive eligibility, income eligibility for the Medically Needy Program is determined using a six-month prospective eligibility period. The six-month period begins with the month in which application for benefits is made. For the full six-month period, a six-month spend-down liability is established. The six-month spend-down liability shall be the amount by which the countable income of the budget unit, as determined at N.J.A.C. 10:70-4.2, exceeds the budget unit's medically needy income level for the full six-month period.

1. Eligibility for medically needy benefits is established effective with the first day of the month in which the allowable incurred medical expenses of the budget unit exceed the six-month spend-down liability only for those claims for services that are covered under the Medically Needy Program and were not used to meet spend-down liability. (Note: the effective date to be entered on the Medicaid Status File is the day after the day spend-down liability is met.)

2. Changes in the countable income of the budget unit and/or the size of the budget unit during the six-month prospective period require a recalculation of the six-month spend-down liability.

3. In order to receive program benefits, upon meeting the spend-down liability, all other factors of program eligibility must also be met.

#### 10:70-6.2 Allowable incurred medical expenses

(a) Allowable incurred medical expenses which may be applied against spend-down liability are those which are:

1. Incurred by a member of the budget unit and for which a member of the budget unit has an express obligation for payment;

2. For necessary medical or remedial services recognized under state law, provided, prescribed, or recommended by a qualified and appropriately licensed medical practitioner; and

3. Submitted with sufficiently detailed information and documentation to determine the allowableness of the expense. Minimum necessary information includes: the date of the service, name of the provider, the nature of the service, the name of the individual to whom the service was provided, and the total amount of the bill, as well as the remaining balance outstanding.

(b) Medical expenses which have been paid in full prior to the retroactive budget period, shall not be applied against spend-down liability. However, medical expenses paid by a member of the budget unit during an eligibility period may be used in meeting spend-down liability so long as the expense met the criteria specified in (a) above.

(c) The county welfare agency shall refer the submission of expenses for questionable medical services to designated staff of the Division of Medical Assistance and Health Services for a determination of allowableness.

(d) To the extent that payment of any bill for medical services is the responsibility of a third party (for example, a health insurer), the expense shall not be applied against spend-down liability.

(e) Any bill for medical services rendered more than six months prior to the bill's submission to the county welfare agency for application against spend-down liability must be accompanied by a statement from

the provider that the expense remains an express obligation of a member of the budget unit and has not been forgiven by the provider or otherwise determined uncollectible.

#### 10:70-6.3 Application of medical expenses toward spend-down

(a) In determining eligibility under medical spend-down, expenses are applied in the following order against the spend-down liability:

1. Medicare and other health insurance premiums, deductibles, or coinsurance charges incurred by a member of the budget unit;

2. Expenses incurred by the members of the budget unit for allowable medical expenses for services not covered under the Medically Needy Program (including covered services provided to members of the budget unit who are not members of a medically needy eligibility category);

3. Expenses incurred by budget unit members, who are also members of a medically needy eligibility category, for services covered by the Medically Needy Program.

(b) Health insurance premiums billed less often than monthly, shall be averaged over the period of coverage that the premium is intended to purchase and applied incrementally against spend-down liability. The client is required to report to the county welfare agency the cancellation of any such insurance.

(c) If a member of a budget unit has arranged to make monthly payments toward a previously incurred medical expense thereby modifying the terms of the liability for the expense, the amount of the monthly obligation rather than the outstanding balance shall be applied against spend-down liability.

(d) Any medical expenses may be applied against spend-down liability only once. However, incurred medical expenses in excess of those required to meet the spend-down liability for a budget period (which have not been applied against spend-down liability), may be applied against spend-down liability in future budget period so long as a member of the budget unit continues to have an express obligation for payment of the expense.

1. If, in any eligibility period, the budget unit does not meet its spend-down liability, the incurred medical expenses that were compared to that spend-down liability are not considered to have been used in meeting spend-down liability. Any such expenses may be applied to subsequent eligibility periods so long as the expenses remain allowable in accordance with N.J.A.C. 10:70-6.2.

(e) In certain circumstances, it may be beneficial to program applicants or recipients to delay the application of incurred medical expenses against spend-down liability. For example: An individual has sufficient incurred medical expenses to establish eligibility under medical spend-down in each of the three months of the retroactive eligibility period. However, during that period, he has no or few incurred expenses for services covered under the Medically Needy Program. The individual may elect to forego eligibility for the months of retroactive coverage and apply the incurred medical expenses against spend-down liability for the prospective eligibility period. In any such circumstances, the county welfare agency shall fully explain the options available and the ramifications thereto.

### SUBCHAPTER 7. OTHER ADMINISTRATIVE REQUIREMENTS

#### 10:70-7.1 Notice of county welfare agency decision

(a) The county welfare agency shall promptly notify any applicant for, or recipient of, the Medically Needy Program in writing of any agency decision affecting the applicant or recipient. When a decision relates to any adverse action which may entitle a recipient to a fair hearing, the action may not be implemented until at least ten days after the mailing of the notice (see (f) of this section for exceptions to the ten-day notice).

1. For notices of action adverse to a recipient, the date of mailing of the notice must appear on the notice.

2. Notices of any county welfare agency action must contain the name, address, and telephone number of the legal services agency serving that county.

3. In the case of an applicant or recipient who cannot be located, the notice shall be mailed to his or her last known address.

(b) All notices of agency decision shall state in clear and simple language, the nature of the agency decision and an accurate factual and legal basis for the decision.

1. All notices of agency decision shall include an explanation of the right to a fair hearing.

2. Notices of agency decisions adverse to the applicant or recipient shall include the citation and title of the regulations upon which the agency decision is based.

(c) For cases which are determined eligible pending spend-down, the notice shall include a statement of the amount of spend-down liability and shall advise the applicant to notify the county welfare agency when

that liability is met. The notice shall also advise that the established spend-down liability is subject to a change based on changes in countable income or budget unit size or composition. Further, the notice must specify that eligibility under medical spend-down is contingent on all other factors of eligibility being met at the time that the spend-down liability is met.

(d) All notices of denial or termination shall include an explicit statement of the reason for program ineligibility and (except in the case of the death of an applicant or recipient) advise of the right to reapply whenever the applicant or recipient believes that circumstances have changed such that the reason for program ineligibility no longer exists.

(e) When the processing of an application will be delayed beyond the standards for disposition of an application as set forth in N.J.A.C. 10:70-2.1(d), notice shall be mailed prior to the expiration of the disposition period notifying the applicant of the delay and the reasons for it.

(f) The ten-day notice requirement for actions adverse to a program recipient need not be adhered to when:

1. The county welfare agency has factual information confirming the death of a recipient;

2. The county welfare agency receives a clear written statement, signed by a recipient, that he or she no longer wishes to receive program benefits, or which gives information indicating a change in circumstances which requires a termination or reduction in benefits, and the recipient has indicated in writing, that he or she understands that this must be the consequence of supplying such information;

3. The recipient's whereabouts are unknown and agency mail directed to him or her has been returned by the post office indicating no forwarding address;

4. The recipient has been accepted for public or medical assistance in another state and that fact has been established by the county welfare agency; or

5. A recipient child has been removed from the home as a result of a judicial determination, or voluntarily placed in foster care by his or her legal guardian.

#### 10:70-7.2 Fair hearings

(a) It is the right of every applicant for or recipient of the Medically Needy Program to be afforded the opportunity for a fair hearing in the manner set forth in N.J.A.C. 10:49-5, including when applicable, continuation of program benefits pending the results of the fair hearing.

(b) Any request for a fair hearing shall be forwarded to the Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625.

#### 10:70-7.3 Case records

(a) The purpose of the case record is to provide a complete documentary record of county welfare agency decisions and actions and the reasons thereto.

(b) The case record shall include:

1. A record of all county welfare agency actions and decisions relating to the case, as well as, documentary evidence relating to such actions and decisions, including application forms;

2. All medical reports and a record of action of the Medical Review Team as appropriate;

3. All forms relating to financial eligibility including, when appropriate, spend-down liability; and

4. All case-related correspondence, memorandum, and documents except those required by law or regulation to be maintained elsewhere.

(c) No case record, or part thereof, shall be removed from its file location without a record identifying the person who has custody of it.

(d) No case record, or part thereof, shall be removed from the county welfare agency offices except upon the specific authorization of the agency director, deputy director, or other person specifically designated by the agency director to authorize such removal.

(e) All case records shall be filed in a secure and fire-resistant location.

# RULE ADOPTIONS

## COMMUNITY AFFAIRS

### (a)

#### DIVISION OF HOUSING AND DEVELOPMENT

##### Planned Real Estate Development Full Disclosure Regulations

###### Readoption: N.J.A.C. 5:26

Proposed: February 18, 1986 at 18 N.J.R. 392(a).

Adopted: March 25, 1986 by Arthur R. Kondrup, Director, Division of Housing and Development, Department of Community Affairs.

Filed: March 27, 1986 as R.1986 d.129, **without change**.

Authority: N.J.S.A. 45:22A-35.

Effective Date: March 27, 1986.

Expiration Date pursuant to Executive Order No. 66(1978):  
March 1, 1991.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 5:26.

## ENVIRONMENTAL PROTECTION

### (b)

#### DIVISION OF WASTE MANAGEMENT

##### Restriction of Land Disposal of Hazardous Waste

###### Adopted Amendments: N.J.A.C. 7:26-7.4, 8.3, 8.15, 9.2, 10.2 and 10.8

Proposed: April 1, 1985 at 17 N.J.R. 779(a).

Adopted: March 28, 1986 by Richard T. Dewling, Commissioner, Department of Environmental Protection.

Filed: March 31, 1986 as R.1986 d.135, **with substantive changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1D-1 et seq.; 13:1E-1 et seq.; and 58:10A-1 et seq.

Effective Date: April 21, 1986.

Expiration Date pursuant to Executive Order No. 66(1978):  
November 4, 1990.

DEP Docket No. 012-85-02.

**Summary of Public Comments and Agency Responses:**

The Department received three written comments concerning the proposed amendments. Two of the comments, from the Sierra Club and the Hazardous Waste Facility Siting Commission's Source Reduction and Recycling Task Force, were favorable to the proposal and suggested that further regulations concerning the restriction of land disposal of hazardous waste be developed.

A final comment was received from the Ad Hoc Committee of New Jersey Pharmaceutical Manufacturers to Comment on the Proposed Hazardous Waste Regulations, and is summarized as follows:

COMMENT: The prohibition of the disposal of acute hazardous and toxic wastes listed at N.J.A.C. 7:26-8.15(e) and (f) in landfills and surface impoundments is a reasonable objective. However, a question is presented concerning how the regulation of process waste or mixture(s) of process waste containing these substances would be accomplished. The proposal provides at N.J.A.C. 7:26-8.15(h) and (i) that "Where the Department has determined that a process waste or mixture(s) of process waste containing substances listed in (e) and (f) respectively, is hazardous" it shall be managed in the same manner as acute toxic or hazardous waste. However, the procedure which the Department will use in making this determination is not specified.

RESPONSE: N.J.A.C. 7:26-8.15(h) and (i) were proposed to enable generators to differentiate, for the purpose of manifesting waste, between discarded commercial chemical products, (and off-specification species, containers that held these commercial chemical products and spill residues of these chemical products) listed in N.J.A.C. 7:26-8.15(e) and (f), and other wastes that contain, as hazardous constituents, substances on those lists.

The proposed regulation distinguished between listed P and U wastes which are subject to the land disposal ban, and process wastes that contain substances listed on the P and U lists as hazardous constituents. These process wastes, when determined to be hazardous by the generator or the Department, pursuant to N.J.A.C. 7:26-8.6 and 8.7, are not subject to the proposed restriction on land disposal.

At the present time, no published mechanism exists for assigning waste codes to waste streams classified as hazardous waste because of their constituent content. In the past, these hazardous wastes have been inappropriately manifested using P and U numbers to identify the constituent of concern. For the purpose of tracking waste this presents little problem. The adoption of a land disposal ban for discarded commercial chemical products (P and U wastes), however, necessitates the development of an alternative mechanism for assigning waste codes for manifesting constituent-containing hazardous waste streams.

The proposed regulation required that the hazardous waste streams containing substances listed in N.J.A.C. 7:26-8.16 be manifested using the prefixes R (for substances on the P list) and W (for substances on the U list) followed by the three-digit number listed for the substance. The Department realizes that deriving waste codes for hazardous constituents from the list of commercial chemical products is confusing. Rather, a better approach would be to assign waste codes to each hazardous constituent listed in N.J.A.C. 7:26-8.16 to be used when manifesting waste streams classified as hazardous waste. N.J.A.C. 7:26-8.15(h) and (i) therefore, are being deleted from the adoption. The Department is proposing an amendment to the hazardous waste regulations to list individual waste codes for each hazardous constituent listed in N.J.A.C. 7:26-8.16. The proposed amendment appears in this issue of the New Jersey Register, and will provide a mechanism to identify the constituent of concern in manifesting waste streams determined to be hazardous by the generator or the Department by application of N.J.A.C. 7:26-8.6 and 8.7.

AGENCY NOTE: The Department has, at N.J.A.C. 7:26-7.4(a)12, added a provision governing procedures for a generator's request for a hearing pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1, in the event that the Department approval required by N.J.A.C. 7:26-7.4(a)11 is denied.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks \*thus\*; deletions from proposal shown in brackets with asterisks \*[thus]\*).

7:26-7.4 Hazardous waste generator responsibilities

(a) General requirements for generators not exempted pursuant to N.J.A.C. 7:26-8 are as follows:

1.-9. (No change.)

10. As of (180 days from adoption), no generator shall offer for final land disposal in New Jersey acute hazardous waste (H), as listed in N.J.A.C. 7:26-8.15(e), and toxic waste (T), as listed in N.J.A.C. 7:26-8.15(f), except in accordance with the following:

i. Where the final land disposal method is a land treatment unit, as approved in accordance with N.J.A.C. 7:14A and N.J.A.C. 7:26, to accept such waste; or

ii. Where the final land disposal method is a surface impoundment or landfill, the generator shall demonstrate and obtain prior Departmental approval in accordance with 11 below that the following requirements are met:

(1) The waste has been rendered non-acute hazardous or non-toxic; or

(2) The waste cannot be rendered non-acute hazardous or non-toxic, destroyed by chemical, biological and thermal processes, recycled or reclaimed, in accordance with N.J.A.C. 7:26, at an authorized hazardous waste facility, and the waste has been chemically stabilized and completely encapsulated to eliminate its leaking potential to the environment.

11. Documentation of the demonstration required by 10ii above shall be submitted for Department approval and shall include, but not be limited to, the following:

i. For treatment methods to render the waste non-acute hazardous or non-toxic and for the stabilization and encapsulation methods to eliminate the leaking potential to the environment, the generator shall submit:

(1) A statement of the generator's interest and need for the proposed action;

(2) A description of the waste and an estimate of the average and maximum monthly and annual quantities of the waste generated;

(3) A description of the treatment method(s) or stabilization and encapsulation method(s);

(4) The justification for this action including any supporting tests, acceptable scientific publications or completed public or private research projects; and

(5) Certification by the generator which states the following:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

ii. For waste which cannot be rendered non-acute hazardous or non-toxic, destroyed by chemical, biological or thermal processes, recycled or reclaimed, the generator shall submit:

(1) Information detailing the specific markets that have been explored and the basis for the conclusion that there are no treatment, destruction, recycling or reclamation methods available for this waste. This information may include, but shall not be limited to, information available through the New Jersey Hazardous Waste Facilities Plan (see N.J.S.A. 13:1E-58) as published by the New Jersey Hazardous Waste Facilities Siting Commission or other state hazardous waste plans; and

(2) Certification, by the generator of the waste, which states the following:

"I certify, under penalty of law, that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete; that available technically feasible treatment, destruction, reclamation or recycling processes have been explored and that the following wastes (listed by waste code) to be disposed of in New Jersey authorized hazardous waste landfills or hazardous waste surface impoundments cannot be treated, destroyed, recycled, or reclaimed. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

iii. The certification required by i(5) and ii(2), above, shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

**\*12. If the Department denies the approval required by (a)11, above, the generator may request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The hearing request shall be in writing and shall be filed with the Department within 10 calendar days of receipt of the denial.\***

(b)-(i) (No change.)

7:26-8.3 Special requirements for hazardous waste generated by small quantity generators

(a)-(e) (No change.)

(f) In order for hazardous waste generated by a small quantity generator to be excluded from full regulation under this section, the generator must:

1.-2. (No change.)

3. Either treat or dispose of the generator's hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment or disposal facility, either of which is:

i.-iii. (No change.)

iv. Permitted, licensed or registered by the Department to manage New Jersey Waste Type No. 27, unless the waste is prohibited from final land disposal in accordance with N.J.A.C. 7:26-9.2(d); or

v.-vi. (No change.)

(g)-(i) (No change.)

7:26-8.15 Discarded commercial chemical products, off-specification species, containers, spill residues, and process waste or mixtures of process waste containing substances thereof

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

\*[(h) Where the Department has determined that a process waste or mixture(s) of process waste containing substances listed in (e) above is hazardous, the waste shall be managed in accordance with N.J.A.C. 7:26-7. These wastes and their corresponding Hazardous Waste Numbers shall be prefaced by the letter R. For example:

P023—Acetaldehyde, chloro shall be designated as R023—Acetaldehyde, chloro

(i) Where the Department has determined that a process waste or mixture(s) of process waste containing substances listed in (f) above is hazardous, the waste shall be managed in accordance with N.J.A.C. 7:26-7. These wastes and their corresponding Hazardous Waste Numbers shall be prefaced by the letter W. For example:

U001—Acetaldehyde (I) shall be designated as W001—Acetaldehyde (I)]\*

7:26-9.2 General prohibitions

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

(d) As of (180 days from adoption) final land disposal of acute hazardous waste (H), as listed in N.J.A.C. 7:26-8.15(e), and toxic waste (T), as listed in N.J.A.C. 7:26-8.15(f), is prohibited by any person unless:

1. The final disposal method is a land treatment unit, regulated in accordance with N.J.A.C. 7:14A-4, to treat and dispose of one or more of the wastes listed in N.J.A.C. 7:26-8.15(e) or (f); or

2. The owner or operator receives from the generator a copy of documentation that the waste type(s) have been approved by the Department for final land disposal in accordance with N.J.A.C. 7:26-7.4(a)10 and 11.

7:26-10.6 Surface impoundments

(a)-(d) (No change.)

(e) Operational and maintenance standards for surface impoundments include the following:

1.-9. (No change.)

10. The following shall not be placed in a hazardous waste surface impoundment for final disposal:

i. Acute hazardous waste (H), listed in N.J.A.C. 7:26-8.15(e), and toxic waste (T), listed in N.J.A.C. 7:26-8.15(f), unless:

(1) The surface impoundment is approved in accordance with N.J.A.C. 7:14A and N.J.A.C. 7:26 to treat and/or store one or more of the above listed waste types and will close in accordance with (h)1, below; or

(2) The owner or operator receives from the generator a copy of documentation that the waste type(s) have been approved by the Department for final land disposal in accordance with N.J.A.C. 7:26-7.4(a)10 and 11.

(f)-(g) (No change.)

(h) An owner or operator of a surface impoundment shall comply with the following closure requirements:

1. (No change.)

2. For existing surface impoundments (as defined in N.J.A.C. 7:26-1.4), which do not comply with (b)1 above and which have not received acute hazardous waste (H) listed in N.J.A.C. 7:26-8.15(e) or toxic waste (T) listed in N.J.A.C. 7:26-8.15(f), the removal of the materials specified in (h)1ii and 1iii above may be deferred pending the approval by the Department of a containment plan for a total, permanent entombment of referenced materials in such a fashion that no release of contaminants into the environment shall occur during the post-closure period. In order to obtain such approval, the owner or operator shall:

i. Provide evidence that there has not been any contamination of soil or groundwater to date and that acute hazardous waste (H) listed in N.J.A.C. 7:26-8.15(e) or toxic waste (T) listed in N.J.A.C. 7:26-8.15(f) was not placed in the surface impoundment;

ii.-viii. (No change.)

3.-6. (No change.)

7:26-10.8 Hazardous waste landfills

(a)-(d) (No change.)

(e) Operational standards for hazardous waste landfills shall include the following:

1.-9. (No change.)

10. The following shall not be placed in a hazardous waste landfill:

i.-iii. (No change.)

iv. Acute hazardous waste (H) as listed in N.J.A.C. 7:26-8.15(e) and toxic waste (T) as listed in N.J.A.C. 7:26-8.15(f), unless the owner or

operator receives from the generator a copy of documentation that the waste type(s) have been approved by the Department for final land disposal in accordance with N.J.A.C. 7:26-7.4(a)9 and 10.

11.-20. (No change.)

(f)-(j) (No change.)

## HEALTH

### (a)

#### FACILITIES RATE SETTING

##### Standard Hospital Accounting and Rate Evaluation (SHARE)

##### Rate Review Guidelines; Capital Costs

##### Adopted Amendments: N.J.A.C. 8:31A-7.4, 7.5 and 7.14

Proposed: January 21, 1986 at 18 N.J.R. 150(a).

Adopted: March 26, 1986 by J. Richard Goldstein, M.D.,  
Commissioner, Department of Health (with approval of the  
Health Care Administration Board).

Filed: March 31, 1986 as R.1986 d.140, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b.

Effective Date: April 21, 1986.

Expiration Date pursuant to Executive Order No. 66(1978):  
March 18, 1990.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

Full text of the adoption follows.

##### 8:31A-7.4 Methodology for calculating Global Rates

(a) (No change.)

1. (No change.)

2. The adjusted approved Global Rate will be calculated by adjusting the prior year's Global Rate in existence on December 1 by the following factors:

i.-ii. (No change.)

iii. Difference between the approved Global Rate and the projected reasonable costs for:

(1) Interest (in accordance with N.J.A.C. 8:31A-7.5(b)15.)

(2) Non-department depreciation and lease (in accordance with N.J.A.C. 8:31A-7.5(b)15.)

(3)-(4) (No change.)

iv.-v. (No change.)

3.-7. (No change.)

(b) (No change.)

##### 8:31A-7.5 Methodology for Alternate Rates

(a) (No change.)

(b) A proposed Alternate Rate will be developed from the following:  
1.-14. (No change.)

15. Reimbursement for Medicaid patients for capital related costs (depreciation and interest) will be the lesser of the amounts determined from the asset value prior to a change in ownership or the asset value of the new owner on or after July 18, 1984. Costs (including legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies) attributable to the negotiation or settlement of the sale or the purchase of a capital asset are not reimbursable if the asset(s) has previously been reimbursed by Medicaid in accordance with the Rate Review regulations.

##### 8:31A-7.14 Retroactive adjustments

(a) Since the Global Rate (or) the Alternate Rate will establish costs which are reasonable for establishing Reimbursement rates, the Final Payment Rate will be adjusted for the following items only:

1.-3. (No change.)

4. Items excluded from the economic factors as listed in N.J.A.C. 8:31A-7.9 and in accordance with N.J.A.C. 8:31A-7.5(b)15.

5. (No change.)

(b) (No change.)

### (b)

#### HOSPITAL REIMBURSEMENT

##### Procedural and Methodological Regulations Graduate Medical Education

##### Adopted Amendments: N.J.A.C. 8:31B-3.31 and 3.51

Proposed: December 16, 1985 at 17 N.J.R. 2947(a).

Adopted: March 26, 1986 by J. Richard Goldstein,  
Commissioner, Department of Health (with approval by the  
Health Care Administration Board).

Filed: March 31, 1986 as R.1986 d.138, **with substantive and  
technical changes** not requiring additional public notice and  
comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1, et seq., specifically 26:2H-5b, and  
26:2H-18d.

Effective Date: April 21, 1986.

Operative Date: July 1, 1986.

Expiration Date pursuant to Executive Order No. 66(1978):  
October 15, 1990.

##### Summary of Public Comments and Agency Responses:

At the March 13, 1986 meeting of the Health Care Administration Board, the Department's proposal, as amended, was approved for final adoption. The Department was charged with returning to the HCAB by March 1987 with the Graduate Medical Education recommendations of the Department of Higher Education and the Advisory Graduate Medical Education Council (AGMEC).

Comments were received from the following respondents:

New Jersey Hospital Association (NJHA)  
Newark Beth Israel  
Warren Hospital  
St. Mary Hospital (Hoboken)  
Memorial Hospital of Burlington County  
Morristown Memorial Hospital  
Bridgeton Hospital  
Warren Hospital Family Practice Residency Program  
St. Joseph's Hospital and Medical Center  
Monmouth Medical Center

COMMENT: Hospitals requested that the regulation be modified to allow for an appeals process.

DEPARTMENT RESPONSE: The proposed regulation has been modified to include an appeal option. Hospitals will be allowed to appeal for additional approved residency slots under the "not accept" option.

COMMENT: Optimal Graduate Medical Resident levels should be established on a statewide rather than a hospital-specific basis to allow for shifting residents between institutions.

DEPARTMENT RESPONSE: The Department will propose an amendment to include the ability to transfer approved residencies between hospitals. It is the Department's intent to recommend that costs of the positions or associated costs not exceed the approved costs of the transferring hospital. Nor is it the intent that any hospital change to a higher paying peer group as the result of such approvals of transfers. The hospital which increases its residents would be permitted to do so only under the "conditional accept" option. The hospital decreasing its complement of residents may do so under any appeal option. The Department would intend that additional or reduced costs shall not result in changing payment standards. Hospitals already transfer residents among years and specialty programs within their institution.

COMMENT: Although the number of residents may be adequate, there is not adequate distribution or quality evaluations. The amendment should leave open the possibility for DRG funded growth for training programs addressing the distribution and quality issue.

DEPARTMENT RESPONSE: These regulations are in response to conclusions in the AGMEC report. They are designed to contain the cost burdens of unconstrained increases in the numbers of physicians in training while the public and specialized Task Forces study the situation further. Moreover, nothing in the regulations bars hospitals from internally readjusting the specialty mix of their residents within previously approved costs. The Department believes it would be irresponsible not to propose immediate constraints.

COMMENT: Commitments for residents cannot be reduced for the academic year 1986-1987.

DEPARTMENT RESPONSE: Staff at the National Intern and Residency Matching Program have indicated to staff of the Department that changes in the level of 1986-87 residents can be made until February 21, 1986. Hospitals were given notice of the Department's intent in this regard in November 1985.

The Department has eliminated the proposed rollback to the 1984 academic year. It is true that whenever constraints on future increases of any resources occur that some programs will not achieve maximal capacity.

COMMENT: Enough flexibility should be built into the system to deal with maturing GME programs and geographical and specialty distribution problems.

DEPARTMENT RESPONSE: The Department agrees that an ideal approach to statewide educational planning would include consideration of the maturity of programs and the statewide specialty, geographical and population demographics.

It does not agree that these issues are preferably determined in first instance by reimbursement regulations for hospitals.

COMMENT: The proposed regulations are retroactive.

DEPARTMENT RESPONSE: The regulations are not retroactive. The regulation will limit resident positions to the number appealed for or approved as of the 1985 rate year.

COMMENT: Hospital has been increasing the number of Family Practice Residents through an AGMEC grant or with state encouragement.

DEPARTMENT RESPONSE: The regulation does not affect the Department of Education grant funded family practice positions not approved by the Commission.

COMMENT: Federal proposals to limit GME and/or Foreign Medical Graduate (FMG) funding have been dropped from recent legislation.

DEPARTMENT RESPONSE: Although the Federal government did not take final action last session to cut GME/FMG funding there is still strong interest in Washington to reduce these areas.

COMMENT: The AGMEC report recommends expansion of GME training capacity.

DEPARTMENT RESPONSE: The AGMEC report does not recommend expansion of the number of residents in training. As to capacity it states that training capacity "should be expanded only if adequate funding is available, appropriate standards of quality can be assured, and a need for additional training opportunities is demonstrated." AGMEC Task Forces will be investigating these capacity issues.

COMMENT: The State has provided financial incentives to encourage hospitals not to appeal individual budget items except where absolutely necessary. Hospitals are being penalized for following these strategies.

DEPARTMENT RESPONSE: The Department agrees that the magnitude of the residency budget issues is significant enough not to be easily covered by the one percent accept option. Therefore it is anticipated that hospital managements and medical staffs will seriously weigh the value of appealing costs associated with additional residents.

COMMENT: The 1984 level of residents was not established by actual count but was derived artificially. The regulation must take into account the actual number of residents serving in the base year rather than an artificial statistical approximation.

DEPARTMENT RESPONSE: The actual number of Commission-approved residencies for academic year 1985-86 is the basis for the regulation.

COMMENT: The AGMEC report states that the current (1984) number of residents is sufficient, not, as the initial summary indicated, more than sufficient.

DEPARTMENT RESPONSE: If the 1984 number was sufficient given projections of future trends, the 1985 figure (1984 and additional appealed positions) would be more than sufficient.

COMMENT: The Department can curtail the growth of GME through the present appeal mechanism.

DEPARTMENT RESPONSE: The AGMEC report indicated that the current appeals system has not resulted in containment of the increase of GME costs. Therefore this additional measure is necessary.

COMMENT: AGMEC Report data were projections from 1979 figures. The year 1984 was not mentioned in terms of a residency cap.

DEPARTMENT RESPONSE: Physician supply and demand were derived from 1979 data. But the number of residents were actual 1983 numbers reported by the hospitals.

The year 1984 originally was chosen because of AGMEC's judgment that the supply of GME was adequate at the August 1984 publication of the AGMEC report. The Department will base the regulation on the approved level of residents in 1985.

COMMENT: Rollback to 1984 level will hurt the affected residents as well as impair the commitment between them and the hospitals.

DEPARTMENT RESPONSE: Only three hospitals appealed in 1985 for an increase in their number of approved residencies. These hospitals requested a total of 21.5 additional approved residencies. Therefore, the use of the 1984-85 academic year would result in less than a one percent decrease in residents. However, the Department will base the regulation on the 1985-86 academic year and continue funding for residents appealed for in 1985.

COMMENT: Cost savings may be overstated. Residents may have to be replaced by other professionals. Other AGMEC Task Forces may find that more funding will be necessary to improve quality.

DEPARTMENT RESPONSE: These comments are in the form of assertions. The extent to which containment in the growth of residency programs creates additional costs in other areas needs to be addressed when the AGMEC reports are finalized.

COMMENT: Any cap should be based on the number of filled positions rather than the number of approved ones.

DEPARTMENT RESPONSE: The language was changed to Commission-approved residencies at the request of the HCAB. Hospital Rate Setting Commission approved slots are the basis of current reimbursement treatment of GME.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks \*thus\*; deletions from proposal shown in brackets \*[thus]\*).

#### 8:31B-3.31 Commission adjustments and approvals

(a) Any modifications including any statutory or regulatory changes or changes in patient care physician compensation arrangements, made to the Preliminary Cost Base by the Commission shall be classified as direct or indirect and as to the financial elements affected and each element adjusted proportionately.

(b) The Commission shall approve adjustments to hospitals' 1986 \*[and subsequent years]\* mark-up factor\*[s]\* as necessary to subtract approved costs associated with residents in excess of the number of residents approved by the Commission for reimbursement for period beginning July 1, \*[1984]\* \*1985\*. This adjustment shall be effective July 1, 1986. These costs shall include, but not be limited to, resident salaries and fringes, faculty salaries, malpractice and supplies.

#### 8:31B-3.51 Notification appeal and review

(a) (No change.)

(b) Notification by hospitals: Within 45 working days of receipt of the Proposed Schedule of Rates issued pursuant to N.J.A.C. 8:31B-3.2 through 3.15, hospitals shall notify both the Commissioner and the Commission, in writing, of their decision to:

1.-3. (No change.)

4. Notwithstanding the above, effective \*[with]\* \*for\* the 1986 Proposed Schedule of Rates, hospitals may \*[not]\* \*only\* appeal under \*[any appeal]\* \*the not accept\* option for costs associated with numbers of graduate medical residents in excess of the total number of FTE residents approved by the Commission for reimbursement for the period beginning July 1, \*[1984]\* \*1985\*.

(a)

**DRUG UTILIZATION REVIEW COUNCIL  
Interchangeable Drug Products**

**Adopted Amendment: N.J.A.C. 8:71**

Proposed: May 6, 1985, at 17 N.J.R. 1043(a).

Adopted: March 11, 1986 by the Drug Utilization Review Council, James Perhach, Ph.D., Chairman.

Filed: March 31, 1986 as R.1986 d.139, with portions of the proposal not adopted but still pending.

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: April 21, 1986.

Expiration Date pursuant to Executive Order No. 66(1978): April 2, 1989.

**Summary of Public Comments and Agency Responses:**

Regarding warfarin: No comments were received during the public hearing period. However, DuPont (manufacturer of the branded product, Coumadin, which would be replaced with the proposed generic) objected in writing on January 6, 1986—six months after the closing date for comments—stating several therapeutic and economic arguments in opposition to the proposed substitute.

The Drug Utilization Review Council reviewed these late arguments on January 14, 1986, but reaffirmed its earlier decision that the generic warfarin by Pharm. Basics is bioequivalent (that is, therapeutically equal) to Coumadin.

One argument DuPont raised—that the generic was not yet on the market, thus unavailable for substitution—was considered valid at the time. However, the Drug Utilization Review Council has recently received information that the generic will be available in the marketplace in New Jersey in April, 1986, thus implementation of the decision to adopt warfarin by Pharm. Basics is scheduled for April 21, 1986.

The following product and its manufacturer was adopted:

<b>Warfarin Sodium tabs 2, 2.5, 5 mg.</b>	<b>Pharm. Basics</b>
The following products were <b>not adopted</b> but are still pending:	
Isosorbide dinitrate S.L. tabs 10 mg	Barr
Isosorbide dinitrate tabs 20, 30 mg	Barr
Propranolol HCl tabs 10, 20, 40 mg	Lederle
Aminophylline tabs 100 mg	Cord
Dipyridamole tabs 25 mg	Bolar
Methyclothiazide tabs 5 mg	Pharm. Basics
Propranolol HCl tabs 60 mg	Schering
Phentermine HCl caps 30 mg	Chelsea

OFFICE OF ADMINISTRATIVE LAW NOTE: Related Notices of Adoption appear at 17 N.J.R. 2042(b), 17 N.J.R. 2256(b), 17 N.J.R. 2769(b) and 18 N.J.R. 182(a).

**HIGHER EDUCATION**

(b)

**EDUCATIONAL OPPORTUNITY FUND BOARD  
Administrative Policies and Procedures  
Program Support**

**Notice of Correction: N.J.A.C. 9:12-1.4 and 1.5**

Take notice that an error appears in the April 7, 1986 issue of the New Jersey Register at 18 N.J.R. 686 concerning N.J.A.C. 9:12-1.4, Restriction on use of E.O.F. funds, and N.J.A.C. 9:12-1.5, Institutional commitment. N.J.A.C. 9:12-1.4 was proposed as a new rule in the September 16, 1985 issue of the Register at 17 N.J.R. 2219 and should have been published as an adoption in the April 7, 1986 Register. Institutional commitment, formerly codified as N.J.A.C. 9:12-1.4, was recodified as N.J.A.C. 9:12-1.5, but the proposed amendments to the text were not adopted (see proposal in this issue).

The correct text follows:

9:12-1.4 Restriction on use of E.O.F. funds

(a) E.O.F. grant funds must not be used for the following items:

1. Employee benefits for student assistants and part-time personnel;
2. Equipment/hardware;

3. Indirect expenses (for example, overhead cost—space, heat, lights, postage and telephone);
4. Cultural trips; and
5. Transportation of students for normal commuting costs.

9:12-1.5 Institutional commitment

(a) Institutions which participate in the E.O.F. Program shall provide a broad range of supportive services to students enrolled in the program. Institutions shall provide funding equivalent to no less than 50% of the proposed total cost of each program to be supported by E.O.F. grant funds.

1. With regard to matching funds, it is expected that high level institutional officers who are required to serve all students will normally not be included as part of the institutional match. In cases where these individuals are included, a detailed justification must accompany the proposal. The justification should include services provided to the E.O.F. students which would not normally accrue to the student as a result of his/her tuition payment. Generally, personnel who provide direct services to students will be allowed, but must meet the above criteria for institutional match.

2. Indirect expenses may not exceed 10 percent of the total program cost in meeting the match (for example, space, light, heat, etc.).

**HUMAN SERVICES**

(c)

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Administration Manual**

**Retroactive Eligibility: Time Limit for Submission of Application**

**Adopted Amendment: N.J.A.C. 10:49-1.1**

Proposed: November 18, 1985 at 17 N.J.R. 2729(a).

Adopted: March 31, 1986, by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.

Filed: March 31, 1986 as R.1986 d.137, without changes.

Authority: N.J.S.A. 30:4D-3i, 7a, 7b, 7c; 1902(a)(34) of the Social Security Act; 42 CFR 435.914, 42 CFR 447.45(d).

Effective Date: April 21, 1986.

Expiration Date pursuant to Executive Order No. 66(1978): August 12, 1990.

**Summary of Public Comments and Agency Responses:**

Comments were submitted by Bergen County Legal Services. The commentator alleged that the time period was too restrictive because many Medicaid patients were not aware of the availability of retroactive Medicaid benefits until they receive a letter from a collection agency or a summons to appear in court. The Division's response is that applicants should be informed about retroactive eligibility for Medicaid when they apply for assistance such as AFDC (Aid to Families with Dependent Children), SSI (Supplemental Security Income), etc. Medicaid patients then have six months in which to file an application for retroactive eligibility.

In the event an application for retroactive eligibility was denied due to late submittal, then the patient/applicant would have the right to a hearing.

Full text of the adoption follows.

10:49-1.1 Who is eligible for Medicaid?

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

(d) Persons applying for Medicaid benefits will be asked if they have unpaid medical bills incurred within the three month period immediately prior to the month of application for Medicaid. Persons indicating that they do have such bills may complete an "Application for Retroactive Medicaid Eligibility" (FD-74) and forward the application with all outstanding unpaid bills to the Medicaid Retroactive Eligibility Unit. An application for retroactive eligibility may be obtained by the applicant or his/her authorized agent from the county welfare agency, the Medicaid District Office or the Retroactive Eligibility Unit, Medicaid Central Office (address on application). The application must be submitted within six months from the date of application for public assistance.

1. If the New Jersey Medicaid Program determines that the person was eligible for Medicaid at the time the service was rendered or item supplied, providers will be notified directly that the unpaid bills for any service/item covered by the New Jersey Medicaid Program may be reimbursable in accordance with standard Medicaid reimbursement procedures. The provider will then complete the appropriate Medicaid claim form and must submit it to the Retroactive Eligibility Unit for consideration and authorization of payment.

(e) (No change.)

(a)

**Pharmaceutical Services Manual  
Appendices B, D, E**

**Adopted Amendments: N.J.A.C. 10:51-1,  
Appendices B, D, E**

Proposed: February 3, 1986 at 18 N.J.R. 255(a).

Adopted: March 31, 1986, by Geoffrey S. Perselay, Acting  
Commissioner, Department of Human Services.

Filed: March 31, 1986 as R.1986 d.136, with technical changes  
not requiring additional public notice and comment (see  
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4D-6b(6), 7 and 7b; 30:4D-22, 24.

Effective Date: April 21, 1986.

Expiration Date pursuant to Executive Order No. 66(1978):  
October 28, 1990.

Summary of Public Comments and Agency Responses:  
No comments received.

Summary of Changes between Proposal and Adoption:

The Division is deleting Tylenol Extra Strength Capsules because they are no longer being manufactured. The Division is adding Tylenol Extra Strength Caplets to Appendix B. There are also some corrections, such as NDC numbers, to Appendix B and D.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks \*thus\*; deletions from proposal shown in brackets with asterisks \*[thus]\*).

APPENDIX B  
General Non-Legend Drugs

The following are additions to the Non-Legend Drug List:

PRODUCT	SIZE	R.U.	NDC	PAGE
Actifed Capsules	20	Cap	0000081-0020-20	18
Dia-Quel Liquid	120cc	CC	0000088-2011-11	23
Dimetapp Elixir	120cc	CC	0000031-2230-12	24
Dimetapp Extentabs	100	Tab	0000031-2277-63	24
Dimetapp Tablets	24	Tab	0000031-2254-54	24
Maalox Therapeutic Conc	48	Tab	0000067-0344-48	29
Neosporin Cream	15gm	Each	0000081-0737-94	31
Polysporin Powder	10gm	Each	0000081-0793-99	34
Polysporin Spray	90gm	Each	0000081-0792-05	34
Sterile Sod Chlor Sol 0.45%	3cc	cc	0049502-0020-03	36
Sterile Sod Chlor Sol	5cc	cc	0049502-0020-05	36
Sterile Sod Chlor Sol 10%	10cc	cc	0049502-0041-10	36
Sterile Sod Chlor Sol 0.9%	3cc	cc	0049502-0030-03	36
Sterile Sod Chlor Sol	5cc	cc	0049502-0030-05	36
Sterile Sod Chlor Sol	10cc	cc	0049502-0030-10	36
Sterile Sod Chlor Sol 3.0%	10cc	cc	0049502-0040-10	36
Sterile Sod Chlor Sol	10cc	cc	0049502-0041-10	36
*[Tylenol Ex Str Caplets	100	Tab	0000045-0449-09	39]*

DIABETIC TESTING MATERIAL

Ames Dextro System Lancet	100	EACH	0000193-5574-21	44
Autoclix Lancet Device		EACH	0050924-0507-01	44
Autoclix Lancets	100	EACH	0050924-0509-10	44
Autolet Kit		EACH	0000193-2790-01	44
Autolet Platforms (Regular)	200	EACH	0000193-2791-27	44
Autolet Platforms (Super)	200	EACH	0000193-2797-27	44
B-D Autolance Device		EACH	0000293-5771-01	44
B-D Micro-Fine Lancets	100	EACH	0000293-5770-01	44

Chemstrip UGK	50	EACH	0050924-0514-50	44
Chemstrip UGK	100	EACH	0050924-0513-10	44
Monojector Lancet Device		EACH	0008881-6021-17	44
Monolet Blood Lancets	200	EACH	0008881-6020-18	44

The following are changes to the Non-Legend Drug List:

PRODUCT				Page
Alcon-Efrin-12 drops			0000998-0101-30	18
Alcon-Efrin 25 drops			0000998-0102-30	18
Alcon-Efrin 25 Sprays			0000998-0112-30	18
Alcon-Efrin 50 Drops			0000998-0103-30	18
Aquasol-A Drops			0000053-4210-30	19
Beminal-500 tablets			0000046-0830-81	20
Co-Tylenol Liquid			0000045-0189-04	22
E.T. Chewable Vitamins			0000003-0183-40	24
E.T. Chewable W/Iron Vits			0000003-0182-40	24
Sudafed Cough Syrup			0000081-0875-82	37
Tussar-SF Syrup 120cc			0000075-3635-05	38
Tylenol Drops			0000045-0186-15	39
Tylenol Elixir			0000045-0187-04	39
Ultra Tears Ophth Sol			0000998-0412-15	39

Insulin Preparations:

PRODUCT				Page
Actrapid Insulin U-100			0000003-2440-10	43
Lentard Insulin U-100			0000003-2443-10	43
Monotard Insulin U-100			0000003-2442-10	43
Semitard Insulin U-100			0000003-2441-10	43
Ultratard Insulin U-100			0000003-2445-10	43

The following are name changes to the Non-legend Drug List:

PRODUCT	NDC	Page
Novolin Human Reg U-100	0000003-1833-10	43
Novolin Human Lente U-100	0000003-1835-10	43

The following are formula changes to the Non-Legend Drug List:

PRODUCT	Size	R.U.	NDC	Page
Camia Arthritis Pain Reliever	100	TAB	0000043-0104-51	21
Coricidin Demilets	36	TAB	0000085-0075-05	22
*[Coricidin Medilets	36	Tab	0000085-0802-06	22]*
*Coricidin Medilets	36	Tab	0000085-0234-05	22*
Coricidin Tabs	100	TAB	0000085-0522-04	22
Coricidin-D Tabs	100	TAB	0000085-0307-04	22
Doreol Childrens Cough Syrup	120cc	cc	0000043-0537-14	24
Theragran-M Tabs	100	TAB	0000003-0150-50	37

The Following are corrections to the Non-Legend Drug List:

PRODUCT				Page
Basaljel Swallow Tabs			0000008-0473-01	20
Diaphragm-All Flex Kit			Diaphragm	48
Dical-D W/Vit C Capsules			0000074-3587-04	23
Two/G-DM Liquid			0000068-1036-04	39

The following products are deleted from the Non-Legend Drug List:

PRODUCT	Size	R.U.	NDC	Page
[Amesec Pulv	100	CAPS	0000173-0335-23]	19
[Amodrine Tabs	100	TAB	0000025-1291-31]	19
[Neomycin Top Oint/Lilly	15gm	EACH	0000002-1821-47]	31
[SK-AP AP Elixir	120cc	cc	0000007-0175-44]	36
[Surfacacine Jelly	30gm	EACH	0000002-2458-67]	37
*[Tylenol Ex Str Capsules	100	Tab	0000045-0185-05	39]*
[Vit. E Caps 100 iu/Squibb	100	CAP	0000003-0889-50]	41
[Vit. E Caps 100 iu/Squibb Nat	100	TAB	0000003-0352-50]	41

Insulin Preparations:

[Insulin Squibb Beef Lente U-100				
	Any Size	cc	0000003-2703-10]	43
[Insulin Squibb Beef NPH U-100				
	Any Size	cc	0000003-2702-10]	43

[Insulin Squibb Pork Reg U-100	Any Size	cc	000003-2701-10]	43
[Insulin Squibb Prot Zinc U-100	Any Size	cc	000003-3542-15]	43
Contraceptive Materials				
[Ramses Jelly Refill	85gm	EACH	0000234-0003-02]	42
Diabetic Testing Material				
[Glucola 300cc		EACH	0000193-2607-10]	44

**APPENDIX D**  
**Legend Devices**

The following products are deleted from the Legend Devices List:

PRODUCT	R.U.	NDC	Page
[Diaphragm-Ramses Any Size Pkg	EACH	0000234-0602-01]	48
[Healon Inj/Disp Syringe	EACH	0000016-0311-12]	48

The following product is to be added to the Legend Devices List:

Inspirease Drug Delivery System	EACH	0000369-4602-01	48
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**APPENDIX E**  
**Protein Replacements and Other Special Items**

The following are to be deleted from the Appendix E List:

PRODUCT	R.U.	NDC	Page
Cho-Free Conc. 14oz	EACH	0000033-2391-14]	49
Compleat-B R.T.U. 13.6oz	EACH	0000212-0200-50]	49
Enfamil Concentr. Liq. 13oz	EACH	0000087-0300-01]	49
Enfamil Nursette 4oz	EACH	0000087-0280-01]	49
Enfamil Nursette 6oz	EACH	0000087-0280-15]	49
Enfamil Nursette 8oz	EACH	0000087-0280-26]	49
Enfamil Nursette-Plastic 8oz	EACH	0000087-0284-01]	49
Enfamil Powder 1 lb	EACH	0000087-0330-01]	49
Enfamil R.T.U.* 8oz	EACH	0000087-0302-24]	49
Enfamil R.T.U.* 32oz	EACH	0000087-0302-22]	49
Enfamil W/Iron Concentr. 13oz	EACH	0000087-0301-01]	49
Enfamil W/Iron Nursette 6oz	EACH	0000087-0315-01]	49
Enfamil W/Iron Powder 1 lb	EACH	0000087-0331-01]	49
Enfamil W/Iron R.T.U.* 8oz	EACH	0000087-0305-02]	49
Enfamil W/Iron R.T.U.* 32oz	EACH	0000087-0305-01]	49
Nutri-1000 10oz	EACH	0000161-0560-00]	50
Nutri-1000 32oz	EACH	0000161-0560-11]	50
Similac Concentr.—Can 13oz	EACH	0000074-0264-01]	50
Similac R.T.U.*—Can 8oz	EACH	0000074-0177-01]	50
Similac R.T.U.*—Can 32oz	EACH	0000074-0232-01]	50
Similac Nursette 4oz	EACH	0000074-0480-01]	50
Similac Nursette 8oz	EACH	0000074-0880-01]	50
Similac Powder 1 lb	EACH	0000074-0139-01]	50
Similac Advance Conc. 13oz	EACH	0000074-3313-01]	50
Similac Advance Conc. 32oz	EACH	0000074-3301-01]	50
SMA Liquid Conc. 13oz	EACH	0000008-0447-02]	50
SMA Powder 1 lb	EACH	0000008-0448-02]	50
SMA R.T.U.* 8oz	EACH	0000008-0449-11]	50
SMA R.T.U.* 32oz	EACH	0000008-0449-02]	50
Sustacal Pudding 5oz all Flavors	EACH	0000087-0415-41]	50

(a)

**Pharmaceutical Services Manual**  
**Consultant Pharmacist Services**  
**Readoption: N.J.A.C. 10:51-4**

Proposed: November 18, 1985 at 17 N.J.R. 2731(a).  
Adopted: March 24, 1986, by Geoffrey S. Perselay, Acting  
Commissioner, Department of Human Services.  
Filed: March 24, 1986 as R.1986 d.127, **without change**.  
Authority: N.J.S.A. 30:4D-6a(4)(a)b(6)(13)(14), 7, 7a, 7b; 42 CFR  
442.333; 20 CFR 405.1127.  
Effective Date: March 24, 1986.  
Expiration Date pursuant to Executive Order No. 66(1978):  
October 28, 1990.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text** of the readoption appears in the New Jersey Administrative  
Code at N.J.A.C. 10:51-4.

(b)

**Manual for Dental Services**  
**Procedure Codes and Descriptions**  
**Readoption: N.J.A.C. 10:56-3**

Proposed: January 21, 1986 at 18 N.J.R. 154(a).  
Adopted: March 24, 1986, by Geoffrey S. Perselay, Acting  
Commissioner, Department of Human Services.  
Filed: March 24, 1986 as R.1986 d.128, **without change**.  
Authority: N.J.S.A. 30:4D-6b(3)(4), 7, 7a, 7b.  
Effective Date: March 24, 1986.  
Expiration Date pursuant to Executive Order No. 66(1978):  
September 10, 1986.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text** of the readoption appears in the New Jersey Administrative  
Code at N.J.A.C. 10:56-3.

**TRANSPORTATION**

(c)

**NEW JERSEY TRANSIT CORPORATION**  
**Procurement Policies and Procedures**  
**Readoption: N.J.A.C. 16:72**

Proposed: February 18, 1986 at 18 N.J.R. 404(a).  
Adopted: March 26, 1986 by Jerome C. Premo, Executive  
Director, New Jersey Transit Corporation.  
Filed: March 31, 1986 as R.1986 d.134, **without change**.  
Authority: N.J.S.A. 27:25-5(e).  
Effective Date: March 31, 1986.  
Expiration Date pursuant to Executive Order No. 66(1978):  
March 31, 1991.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text** of the readoption appears in the New Jersey Administrative  
Code at N.J.A.C. 16:72.

## TREASURY-GENERAL

### GENERAL SERVICES ADMINISTRATION DIVISION OF PURCHASE AND PROPERTY

#### (a)

#### Reciprocal Action in Public Contracts Out-of-State Vendors

##### Adopted New Rule: N.J.A.C. 17:12-2.11

Proposed: February 3, 1986 at 18 N.J.R. 264(b).

Adopted: March 31, 1986, by the Division of Purchase and Property, James J. Rosenberg, Director.

Filed: March 31, 1986 as R.1986 d.132, **without change**.

Authority: N.J.S.A. 52:18A-178 et seq., 52:27B-56 and P.L. 1985, c.156.

Effective Date: April 21, 1986.

Expiration Date pursuant to Executive Order No. 66(1978):  
August 15, 1989.

#### Summary of Public Comments and Agency Responses: No comments received.

Full text of the adoption follows.

17:12-2.11 Preference laws; out-of-state vendors

(a) Pursuant to the provisions of Public Law 1985, Chapter 156, the Director, Division of Purchase and Property shall conduct an annual survey of all states to obtain information concerning their statutes, rules and regulations related to in-state preference for the procurement of commodities and services. The Director shall apply a like policy to bids submitted by out-of-state vendors competing in New Jersey with New Jersey bidders for public contracts.

(b) The Director may waive the reciprocity action when, in his judgment, it is determined to be in the best interest of the State.

#### (b)

#### Cooperative Purchasing Independent Institutions of Higher Education

##### Adopted Amendment: N.J.A.C. 17:12-5.1

##### Adopted New Rule: N.J.A.C. 17:12-5.2

Proposed: February 3, 1986 at 18 N.J.R. 265(a)

Adopted: March 31, 1986 by the Division of Purchase and Property, James J. Rosenberg, Director.

Filed: March 27, 1986 as R.1986 d.133, **without change**.

Authority: N.J.S.A. 52:27B-56 and P.L. 1985, c. 263.

Effective Date: April 21, 1986.

Expiration Date pursuant to Executive Order No. 66(1978):  
August 15, 1989.

#### Summary of Public Comments and Agency Responses: No comments received.

Full text of the adoption follows.

17:12-5.1 Subscription fees

(a) The Director, Division of Purchase and Property may establish a subscription fee for the dissemination of State contract and specification information to the local governments, school districts and independent institutions of higher education of this State. That fee shall be chargeable on an annual basis, and shall be structured to include direct State costs of personnel, printing and mailing of notices of contract award and other procurement information to the local governments, school districts and independent institutions of higher education.

(b) At the end of each fiscal year the Director, Division of Purchase and Property will review expenditures under the program, certify as to their accuracy, and adjust subscription rates accordingly.

17:12-5.2 Participation in State contracts by independent institutions of higher education

(a) Pursuant to the Public Laws of 1985, Chapter 263, the Director, Division of Purchase and Property may permit the use of selected State contracts for commodities and services by independent institutions of higher education. The Director will periodically make a list of selected contracts available to these institutions for their use.

(b) The independent institutions of higher education shall be responsible for issuance of purchase orders, certification of accepted commodities, payment of invoices, and resolution of complaints relative to procurement transactions with State contract vendors.

# EMERGENCY ADOPTIONS

## HUMAN SERVICES

### DIVISION OF PUBLIC WELFARE

The following amendments were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 17:30-4.5). Concurrently, the provisions of this emergency amendment are being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Submit comments by May 21, 1986 to:  
Audrey Harris, Director  
Division of Public Welfare  
CN 716  
Trenton, New Jersey 08625

(a)

### Assistance Standards Handbook Emergency Assistance

#### Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 10:82-5.10

Emergency Amendment Adopted: March 16, 1986 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): March 24, 1986.

Emergency Amendment Filed: March 27, 1986 as R.1986 d.130.

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Emergency Amendment Effective Date: March 27, 1986.

Emergency Amendment Expiration Date: May 26, 1986.

Concurrent Proposal Number: PRN 1986-147.

The agency emergency adoption and concurrent proposal follows:

#### Summary

The emergency adoption and concurrent proposed amendment expands the provision of Emergency Assistance (EA) funds in the Aid to Families with Dependent Children (AFDC) program for temporary shelter due to actual or imminent homelessness. The amendment extends the time period for which EA funds for emergency shelter may be authorized by the county welfare agency (CWA) from the current calendar month following the month in which the emergency become known to the county welfare agency. The amendment more accurately reflects the realities of the housing market faced by AFDC families as a result of an actual or imminent state of homelessness. The period of time necessary for homeless AFDC families to find more permanent shelter arrangements at a reasonable rate often extends beyond the time period for which temporary shelter is currently funded under EA. The adoption of this amendment during the winter months, when more incidents of homelessness occur due to fire or similar situations and the need for temporary shelter is the greatest, will enable New Jersey to more effectively address the needs of certain temporarily homeless citizens.

The amendment also provides that after the calendar month in which EA payments for such temporary shelter commence, the amount paid for temporary shelter shall be adjusted by a shelter element standardized by eligible unit size. Since the average monthly amount paid by CWAs for temporary shelter exceeds \$700.00 per family, it is fiscally sound to offset that payment by a portion of the amount representing a family's normal shelter expenditure for those month(s) after the occurrence of the emergent situation. The adjustment will avoid duplication of assistance which would result if both a full EA payment for temporary shelter and the family's full monthly AFDC grant were paid.

#### Social Impact

The emergency adoption will have positive social impact because it will enable New Jersey to address the needs of certain temporarily homeless citizens during the winter months when the seriousness of such incidents of homelessness is the greatest.

#### Economic Impact

The emergency adoption would result in additional expenditures of State and county assistance, with corresponding Federal financial participation (FFP) where applicable. Approximately 1,700 AFDC families per year are estimated to require temporary shelter extending up to a period of 90 days. Also, approximately 400 AFDC families would require emergency temporary shelter for a second emergency within the 12-month period, which is not subject to FFP per Federal regulations. Adjusting the total estimated payments for emergency temporary shelter by the shelter component after the first calendar month, would result in an estimated gross assistance cost of \$2.12 million annually, representing \$950,000 in Federal funds, \$877,500 in State funds and \$292,500 in county funds. For the balance of Fiscal Year 1986 (approximately 5 months), the gross assistance cost is estimated to be \$883,350, representing \$395,850 in Federal funds, \$365,625 in State funds and \$121,875 in county funds.

Full text of the emergency adoption and concurrent proposal follows (additions shown in boldface thus; deletions shown in brackets [thus]).

10:82-5.10 Emergency assistance

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

(c) When there has been substantial loss of shelter, food, clothing, or household furnishings by fire, flood, or other similar natural disaster, or when because of an emergent situation over which they had no control or opportunity to plan in advance, the eligible unit is in a state of homelessness and the county welfare agency determines that the providing of shelter, [and/or] food, [and/or emergency] clothing [and/] or minimum essential [house] home furnishings are necessary for health and safety, such needs may be recognized in accordance with the regulations and limitations in the following sections.

1. Emergency shelter: When an actual state of homelessness exists or is manifestly imminent, the county welfare agency shall authorize payment of the actual cost of adequate emergency shelter arrangements at the most reasonable rate available, for a specified temporary period not to exceed [the calendar month following the month in] **90 days following the date on which the state of homelessness first becomes known to the county welfare agency.**

i. Funds from the regular assistance grant or funds considered in developing the amount of that grant are not to be considered in computing the amount of payment for temporary emergency shelter, **except as provided in iii below.** When more permanent living arrangements are made, any funds actually available to the client from the grant or other income are to be counted in the determination of emergency assistance payments for shelter or utility deposits.

ii. (See proposal at 18 N.J.R. 263.)

iii. **Any emergency shelter payments issued for temporary shelter subsequent to the calendar month in which those payments began shall be reduced by the amounts in Schedule VII below. For circumstances in which the temporary shelter is for a period of less than a full calendar month, the amount of the reduction shall be prorated using the proration factors in N.J.A.C. 10:82-2.2.**

#### Schedule VII: Emergency Shelter Reduction Amounts

AFDC-C and F	Eligible Unit Size	AFDC-N
\$ 66	1	\$ 44
132	2	88
173	3	115
199	4	133
226	5	151
252	6	168
278	7	185
304	8	203
330	9	220
356	10	238
add \$26 each person	more than 10	add \$18 each person

iv. **When required to establish the family in a more permanent living arrangement, allowances may be authorized for security deposits for rent and utilities.**

2.-5. (No change.)

(d) Rules concerning victims of domestic violence are:

1.-2. (No change.)

3. Allowances:

i. Temporary shelter: Cost of temporary shelter arrangements may be authorized in an amount not to exceed the most reasonable cost of similar arrangements in a [motel/hotel] **motel or hotel** and shall be for a period not to exceed [the calendar month following the month in] **90 days following the date on which the state of homelessness first becomes known to the county welfare agency, subject to the provisions of (c)liii above.**

ii.-iv. (No change.)

4. (No change.)

(e) (No change.)

## (a)

### General Assistance Manual Emergency Grants

#### Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 10:85-4.6

Emergency Amendment Adopted: March 16, 1986 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): March 24, 1986.

Emergency Amendment Filed: March 27, 1986 as R.1986 d.131.

Authority: N.J.S.A. 44:8-111(d).

Emergency Amendment Effective Date: March 27, 1986.

Emergency Amendment Expiration Date: May 28, 1986.

Concurrent Proposal Number: PRN 1986-148.

The agency emergency adoption and concurrent proposal follows:

#### Summary

The emergency adoption and concurrent proposed amendment expands the provision of emergency grants in the General Assistance (GA) program for temporary shelter due to actual or imminent homelessness. The amendment extend the time period for which grants for emergency shelter may be authorized by the municipal welfare department (MWD) from the current calendar month following the month in which the emergency becomes known to 90 days following the date on which the emergency becomes known to the MWD. The amendment more accurately reflects the realities of the housing market faced by GA recipients as the result of an actual or imminent state of homelessness. The period of time necessary for homeless GA recipients to find more permanent shelter arrangements at a reasonable rate often extends beyond the time period for which temporary shelter is currently funded by emergency grants. The adoption of this amendment during the winter months, when more incidents of homelessness occur due to fire or similar situations and the need for temporary shelter is the greatest, will enable New Jersey to more effectively address the needs of certain temporarily homeless citizens.

The amendment also provides that after the calendar month in which emergency grants for such temporary shelter commence, the amount paid for temporary shelter shall be adjusted by a shelter element standardized by eligible unit and household size. Since the average monthly amount paid by MWDs for temporary shelter is considerable, it is fiscally sound to offset that payment be a portion of the amount representing a GA recipient's normal shelter expenditure for those month(s) after the occurrence of the emergency situation. The adjustment will avoid duplication of assistance which would result if both a full emergency grant for temporary shelter and the recipient's full monthly GA grant were paid.

#### Social Impact

The emergency adoption will have positive social impact because it will enable New Jersey to address the needs of certain temporarily homeless citizens during the winter months when the seriousness of such incidents of homelessness is the greatest. If this rule were proposed under the normal rulemaking process, the earliest date the rule could be adopted and implemented would be May 1986, well beyond the months during which the circumstances warranting such assistance is most critical.

#### Economic Impact

The emergency adoption would result in additional expenditures of State and local assistance. Approximately 1,200 GA recipients per year are estimated to require temporary shelter extending up to a period of 90 days. Also, approximately 675 GA recipients are estimated to require emergency temporary shelter for a second emergency in the 12-month period. The total cost of assistance for such emergencies, adjusted by the shelter element after the first calendar month, would result in an estimated gross assistance cost of \$250,000 annually, representing \$187,500 in State funds and \$62,500 in local funds. For the balance of Fiscal Year 1986 (approximately five months), the gross assistance cost is estimated at \$104,200, representing \$78,150 in State funds and \$26,050 in local funds.

**Full text** of the emergency adoption and concurrent proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

#### 10:85-4.6 Emergency grants

(a) An emergency grant shall be authorized to or for an individual(s) otherwise eligible to receive general assistance under the regulations in this manual when circumstances set forth in (a)1-2 below exist. In addition, these regulations shall apply to an emergency (as described in (a)1-2 below) which occurred within the seven calendar days immediately prior to the application for General Assistance if the applicant(s) is determined eligible at the time of application under established procedures and standards.

1. (No change.)

2. Situation beyond client's control: Because of an emergent situation over which the individual had no control or opportunity to plan in advance, [he/she] **he or she** is in a state of homelessness, and the municipal welfare director determines that provision of shelter, food, clothing, [and/or] **or** minimum essential house furnishings are necessary for the health and safety of the individual:

i. Domestic violence: The state of homelessness may result from imminent or demonstrated violence which imperiled the health and safety of the individual or eligible unit[; or] .

3. (No change.)

(b) Standards for emergency grants are:

1. Emergency shelter: When an actual state of homelessness exists or is manifestly imminent in accordance with (a)1 or (a)2 of this section the authorized payment shall be the actual cost of adequate emergency shelter arrangements, at the most reasonable rate available, for a specified temporary period not to exceed [the calendar month following the month in] **90 days following the date on which the state of homelessness first becomes known to the municipal welfare department.**

i. (No change.)

ii. The regular grant of assistance (including calculated earned income and exempt income) is not to be counted in the determination of eligibility for or the amount of emergency assistance payments authorized for temporary emergency shelter, **except as provided in iii below.**

(1) (No change.)

iii. **Any emergency shelter payments issued for temporary shelter subsequent to the calendar month in which those payments began shall be reduced by the amounts in Schedules IIA and IIB below. For circumstances in which the temporary shelter is for a period of less than a full calendar month, the amount of the reduction shall be prorated using the proration factors in N.J.A.C. 10:85-3.3(f)2vi.**

**Schedule IIA**  
**Emergency Shelter Reduction Amounts**  
(Limited to persons determined unable to accept employment)

Number in Household	Eligible Unit	
	1	2
1	\$86	
2	59	118
3	53	106
4	47	95
5	44	87
6	41	82
7	35	70
8	34	68
9	32	64
10	30	61
11	30	60
12	29	59
13	29	57
14	28	57
15	28	56

**Schedule IIB**  
**Emergency Shelter Reduction Amounts**  
(For eligible units in which at least one person is employable)

Number in Household	Number in Eligible Unit														
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1	\$57														
2	39	78													
3	33	66	99												
4	29	57	86	115											
5	26	52	78	104	131										
6	24	49	74	98	122	147									
7	23	46	69	93	116	139	162								
8	22	45	67	89	111	134	156	178							
9	21	43	64	85	107	128	149	170	192						
10	21	41	61	82	102	123	143	163	184	205					
11	20	40	60	80	100	120	140	160	180	200	220				
12	20	39	59	79	98	118	137	157	177	196	216	236			
13	19	39	58	78	97	116	136	155	174	194	214	233	253		
14	19	38	57	76	95	114	133	152	171	190	209	228	247	266	
15	19	37	56	74	93	112	131	149	168	186	205	223	242	261	279

In eligible units of more than 15, add \$13 for each additional number.

2.-4. (No change.)  
(c)-(e) (No change.)

## OTHER AGENCIES

### (a)

#### CASINO REINVESTMENT DEVELOPMENT AUTHORITY

#### Project Eligibility, Contracts with Casino Licensees Affirmative Action and Debarment

#### Adopted Emergency New Rules and Concurrent Proposal: N.J.A.C. 19:65

Emergency New Rules Adopted: April 3, 1986 by Casino  
Reinvestment Development Authority, Michael G. Cohan,  
Executive Director.

Gubernatorial Approval (see N.J.S.A. 52:14B(c)): March 27,  
1986.

Emergency New Rules Filed: April 3, 1986 as R.1986 d.145.

Authority: N.J.S.A. 5:12-144.1 and N.J.S.A. 5:12-161(f).

Emergency New Rules Effective Date: April 3, 1986.

Emergency New Rules Expiration Date: June 2, 1986.

Concurrent Proposal Number: PRN 1986-120.

Submit comments by May 21, 1986 to:

Michael G. Cohan, Executive Director  
Casino Reinvestment Development Authority  
Jeffries Tower, 17th Floor  
227 North Vermont Avenue  
Atlantic City, New Jersey 08401

These new rules were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the provisions of these emergency new rules are being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The agency emergency new rules and concurrent proposal follows:

#### Summary

The adoption of the proposed new rules will allow the Casino Reinvestment Development Authority (the "Authority") to assist the urban re-development of the State of New Jersey, and, in particular, the City of Atlantic City, by providing eligible projects in which casino licensees may invest. The following summarizes the proposed text of the rules.

Subchapter 1 contains rules of general applicability.

N.J.A.C. 19:65-1.1 states the purpose and objectives of the new rules.

N.J.A.C. 19:65-1.2 is the definition section.

Subchapter 2 contains rules relating to applications, eligibility, priority and hearings.

N.J.A.C. 19:65-2.1 discusses applications generally. The Authority will act upon applications which involve projects that meet the requirements of the Act, the regulations and the goals of the Authority as determined from time to time by the Authority.

N.J.A.C. 19:65-2.2 discusses the time for application. In general, an applicant may apply to the Authority for a determination of eligibility in connection with its project at any time before the commencement of the project. This subchapter also provides rules governing projects which were commenced prior to the effective date of the proposed rules. Failure to apply timely for determination of eligibility as provided in the proposed rules will render the project ineligible unless cause is shown for such failure.

N.J.A.C. 19:65-2.3 provides that an application will be filed with the Authority's Executive Director.

N.J.A.C. 19:65-2.4 provides that the Executive Director shall review the application for completeness and submit the application for the Authority's consideration. In the event the Authority determines the project preliminarily is eligible, the applicant shall thereafter submit such other information as the Authority may request.

N.J.A.C. 19:65-2.5 provides for final review of the project by the Authority and the approval thereof by the Authority.

N.J.A.C. 19:65-2.6 establishes the criteria the Authority will use when approving a project.

N.J.A.C. 19:65-2.7 sets forth the priorities the Authority will consider when approving projects submitted for its approval.

N.J.A.C. 19:65-2.8 requires that the Authority conduct hearings as may

be necessary or appropriate when determining whether a project satisfies the standards, criteria and guidelines set forth in the Act and in the proposed regulations.

Subchapter 3 discusses contracts with casino licensees.

N.J.A.C. 19:65-3.1 sets forth the requirement that there will be no investment tax credit under N.J.S.A. 5:12-144.1 unless the casino licensee has entered into a contract with the Authority.

N.J.A.C. 19:65-3.2 sets forth the various provisions the contract must contain.

Subchapter 4 discusses affirmative action in Authority financed construction projects and casino licensee direct investment construction projects.

N.J.A.C. 19:65-4.1, which would discuss a set-aside program for the New Jersey Development Authority for Small Business, Minorities and Women's Enterprises, has been reserved.

N.J.A.C. 19:65-4.2 sets forth the Authority's affirmative action requirements.

N.J.A.C. 19:65-4.3 establishes the monitoring procedure the Authority will undertake regarding affirmative action.

Subchapter 5 discusses investments by casino licensees pursuant to N.J.S.A. 5:12-144.

N.J.A.C. 19:65-5.1 states that eligibility of investments or contributions by casino licensees required to be made in accordance with the provisions of N.J.S.A. 5:12-144 shall be determined by the Authority pursuant to regulations of the New Jersey Casino Control Commission set forth at N.J.A.C. 19:54-1 to and including N.J.A.C. 19:54-2.237.

Subchapter 6 discusses fees and charges.

N.J.A.C. 19:65-6.1 discusses application fees.

N.J.A.C. 19:65-6.2 relating to administrative fees has been reserved.

Subchapter 7 states rules governing disqualification, debarment and suspension.

N.J.A.C. 19:65-7.1 is a definitional section.

N.J.A.C. 19:65-7.2 discusses causes for debarment.

N.J.A.C. 19:65-7.3 describe the conditions affecting debarment.

N.J.A.C. 19:65-7.4 sets forth the procedures the Authority will undertake when debarring a person and the period of debarment.

N.J.A.C. 19:65-7.5 states the causes for suspension of a person.

N.J.A.C. 19:65-7.6 describes the conditions for suspension of a person.

N.J.A.C. 19:65-7.7 discusses the procedures, period of suspension and scope of suspension affecting persons suspended by the Authority.

N.J.A.C. 19:65-7.8 explains the extent of debarment and suspension resulting from a determination by the Authority.

N.J.A.C. 19:65-7.9 provides for notice of debarment to the Attorney General and the State Treasurer.

N.J.A.C. 19:65-7.10 allows the Authority to rely upon lists of persons suspended or debarred by other government agencies.

N.J.A.C. 19:65-7.11 provides that nothing in this subchapter is intended to limit the discretion of the Authority in determining eligibility for financial or other assistance or to contract or refrain from contracting with any person.

N.J.A.C. 19:65-7.12 states that the Executive Director is authorized to take all necessary action to implement and administer the provisions of this subchapter.

Subchapter 8 discusses waivers.

N.J.A.C. 19:65-8.1 specifies that nothing in the proposed regulations shall be construed to prohibit the Authority from granting waivers from the provisions thereof or the provisions of the Act as expressly provided for in the Act.

N.J.A.C. 19:65-8.2 contains rules relating to the procedure which would allow a party desiring a waiver to submit a written request to the Authority for such a waiver.

The members of the Authority and the Executive Director of the Authority will bear responsibility for implementing the proposed new rules.

#### Social Impact

The adoption of the proposed new rules will permit the Authority to commence financing eligible projects in connection with the provision of housing for persons of low and moderate income and the urban re-development of blighted areas in the State and, in particular, Atlantic City. The infusion of new capital into the economy of Atlantic County in the short term will stimulate the creation of new jobs, the construction of affordable housing for persons of low and moderate income and the provision of other facilities which directly serve pressing social and economic needs of the residents of Atlantic County. Such projects will have the effect of not only improving the living standards of the residents of Atlantic County but also maintaining and expanding the tourist industry

in Atlantic City. In the long term, the financing of eligible projects will benefit the housing stock and employment opportunities for the public at large.

The Authority cannot begin to undertake such projects without the promulgation of these proposed new rules.

#### Economic Impact

The Authority believes that the proposed new rules will present a minimal cost, if any, to the State. The cost of the Authority's operations will be paid out of application fees and administrative fees to be borne by applicants for the Authority's assistance. The economic impact upon casino licensees consists of the credit casino licensees will receive against the investment alternative tax imposed pursuant to N.J.S.A. 5:12-144.1 when they enter into contracts to purchase the bonds of the Authority, make direct investments in eligible projects or donate property to the Authority.

The proposed new rules effectuate the Legislature's policy that casino licensees receive a tax credit to the extent they make investments in projects found to be eligible by the Authority, purchase bonds of the Authority or donate land or property to the Authority. The economic benefits to be received by the citizens of New Jersey from such investments outweigh any impact the proposed new rules might have on the Casino Revenue Fund.

Full text of the emergency new rules and concurrent proposal follows.

### CHAPTER 65

#### CASINO REINVESTMENT DEVELOPMENT AUTHORITY

##### SUBCHAPTER 1. GENERAL PROVISIONS

###### 19:65-1.1 Purpose and objectives

(a) The rules contained in this chapter are established to effectuate, and shall be applied so as to accomplish the general purposes of the Act, including, without limitation:

1. To assist in the development or redevelopment of political subdivisions within the State in the manner and priority set forth in the Act; and
2. To increase opportunities for gainful employment and to improve living conditions in such political subdivisions; and
3. To foster and promote the economy of the State generally.

###### 19:65-1.2 Definitions

As used in this chapter, the following words and terms shall have the following meanings unless a different meaning clearly appears from the context:

"Act" means P.L.1984, c.218, as amended, and as the same may be further amended from time to time.

"Applicant" means any person, entity, licensee, prospective licensee, government, governmental agency, municipality or political subdivision of the State permitted under the provisions of the Act or these rules to apply for review and approval and/or a determination of eligibility of or with respect to a project by the Authority under the Act and these rules.

"Application" means a fully completed and signed application submitted pursuant to the provisions of N.J.A.C. 19:65-2.3 in such form or forms as may be prescribed from time to time by the Authority.

"Approved project" means a project which satisfies the provisions of the Act and these rules and is approved by the Authority.

"Authority" means the Casino Reinvestment Development Authority.

"Bonds" means bonds, notes or evidences of Authority debt issued to licensees pursuant to the Act.

"Contract" means a written contract between the Authority and a Licensee to purchase Bonds pursuant to N.J.A.C. 19:65-3.

"Determination of eligibility" means a determination by the Authority that the applicant's project is an approved project.

"Executive director" means the Executive Director of the Authority.

"Initial contract" means the first contract entered into between the Authority and any licensee.

"Licensee" means the holder of a current and valid casino license issued by the New Jersey Casino Control Commission.

"Participant" means any person, entity, government, governmental agency, municipality, political subdivision of the State or Licensee participating or involved in any aspect of a project.

"Project" means any project presented to the Authority for its review, approval and determination of eligibility under the Act and these rules. Projects may be in the form of construction or rehabilitation; financing; contributions of real estate, cash or other property; loans, investments;

guarantees; purchases of bonds or other obligations; direct investments by licensees or any other form as may be approved by the Authority consistent with the provisions of the Act.

"Prospective licensee" means a person who has applied for a license issued by the New Jersey Casino Control Commission to operate a casino.

"State" means the State of New Jersey.

"SBMWE Development Authority" means the New Jersey Development Authority for Small Business, Minorities and Women's Enterprises.

##### SUBCHAPTER 2. APPLICATION, ELIGIBILITY, PRIORITY AND HEARING

###### 19:65-2.1 Applications generally

(a) The Authority will act upon applications which involve projects that meet the requirements of the Act, these rules and the specific goals of the Authority as determined from time to time by the Authority.

(b) From time to time the Authority may issue guidelines outlining, among other things, the nature of the projects it intends to fund or approve and the approximate amounts available to fund such projects.

(c) In connection with applications seeking Authority determination of eligibility of projects composed of donations by licensees of property, the licensee shall include for the Authority's consideration, in addition to the other requirements of these rules, an appraisal of such property undertaken on a fair market value basis in form and substance, and by an appraiser satisfactory to the Authority.

###### 19:65-2.2 Time for application

(a) Except as otherwise provided in these rules or in the Act, an applicant shall apply to the Authority for a determination of eligibility of its proposed project at any time before the commencement of the project.

(b) With respect to a project commenced by a licensee or prospective licensee prior to the effective date of these rules which such licensee or prospective licensee intends to qualify as an approved project, such person shall apply to the Authority for a determination of eligibility within 90 days of the date of the effective date of these rules.

(c) With respect to a project to be commenced after the effective date of these rules, an applicant shall apply to the Authority in accordance with the procedures set forth in these rules for a determination of eligibility before commencing such project, and shall not commence the project until the Authority makes a determination of eligibility.

(d) For purposes of this section, commencement of a project shall not be deemed to have occurred by mere acquisition of land or real property or by engagement of an architect, engineer or other consultant to draw plans or to determine feasibility, legality, costs or other such factors, or by negotiations with prospective sellers, contractors and investors, or by execution of agreements or contracts which are expressly conditioned upon a determination of eligibility by the Authority.

(e) Failure of an applicant to apply timely for a determination of eligibility as provided in this section shall render the project ineligible unless the applicant establishes to the satisfaction of the Authority that good cause existed for such failure in which case the Authority may waive the time provisions provided for herein.

###### 19:65-2.3 Application

(a) An applicant shall file with the Authority an application, together with:

1. Such other information as the Executive Director and/or the Authority may require including, without limitation, the appraisal required by N.J.A.C. 19:65-2.1(c) if a donation of property is involved; and
2. The application fee(s) provided in N.J.A.C. 19:65-6.1.

###### 19:65-2.4 Preliminary review

(a) The Executive Director shall review the application for completeness and prepare a summary as to potential eligibility of the project and forward the application and summary to the Authority.

(b) In the event the Authority preliminarily determines that the project is of the character and type which is eligible to be an approved project, the applicant shall thereafter submit such other information as the Authority from time to time may request in accordance with the provisions set forth in these rules.

(c) A preliminary determination of eligibility by the Authority pursuant to this Section shall in no event constitute a determination by the Authority that the project is an approved project.

###### 19:65-2.5 Final review

(a) Within such number of days as the Authority may require after notification of a preliminary determination of eligibility as provided in N.J.A.C. 19:65-2.4, the applicant shall file with the Authority such other information as the Authority may require.

(b) The Authority in accordance with the provisions of the Act and these rules shall determine whether the project is an approved project, provided however, no such approval shall be final until a hearing is held pursuant to N.J.A.C. 19:65-2.8.

(c) In addition to considering information provided by the applicant, the Authority may utilize any relevant information or data which is within its knowledge or which is supplied by any Federal, State or local agency, or any other person, entity, group or association which has an interest in the project and which desires to provide such information to the Authority. Further, the Authority may approve a project with such modifications and conditions as it deems necessary and appropriate.

#### 19:65-2.6 Approval criteria

(a) The Authority shall approve projects in accordance with the guidelines and criteria set forth in the Act.

(b) The Authority shall require that the applicant establish, among other things, the following:

1. In the case of projects involving construction, that the site for the proposed project is under the control of the applicant or that a governmental or public body or agency has manifested its intent to permit the applicant to acquire control over the site of the proposed project;

2. That the project is sufficiently financially feasible such that it has the minimum characteristics of an investment which has a degree of assurance that interest and principal payments can be made and other terms of such an investment be maintained over the period thereof such that a loan of the bond proceeds in connection therewith would qualify for a bond rating of "C" or better; and

3. That the applicant has the financial capability to undertake the project; and

4. That the project, with respect to projects not in Atlantic City, will result in minimal displacement of existing households; and with respect to projects in Atlantic City, in cases where displacement of commercial or residential facilities may be necessary, such displacement must be consistent with the Atlantic City Task Force on Housing and Community Development of March 24, 1983 and incorporated in the redevelopment plan known as "Inlet Community Redevelopment—A Balanced Community Concept and Strategy for Reinvestment, Atlantic City, New Jersey, October, 1983" (sometimes referred to as the "American Cities Plan") approved and adopted by the New Jersey Casino Control Commission.

#### 19:65-2.7 Priorities

(a) In considering whether to approve a project, the Authority shall be guided by and accord priority to projects which, among other things:

1. As to projects in Atlantic City:

i. Will lead to the establishment of a balanced community and the development of a comprehensive housing program for the city of Atlantic City;

ii. Addresses the housing needs of the persons and their families residing in the city of Atlantic City in 1983 and continuing such residency through December 19, 1984 and as set forth in the determination, from time to time, by the Authority as to the housing needs for Atlantic City made in consultation with the City of Atlantic City and specifically its zoning and planning boards;

iii. Are in accordance with any other comprehensive plan or project which is consistent with the standards set forth in N.J.S.A. 5:12-144.1f(3) and which is acceptable to the Authority pursuant to N.J.S.A. 5:12-173;

iv. Are located within the area designated for redevelopment under the redevelopment plan known as "Inlet Community Redevelopment—A Balanced Community Concept and Strategy for Reinvestment, Atlantic City, New Jersey, October, 1983" approved and adopted by the New Jersey Casino Control Commission (sometimes referred to as the "American Cities Plan"), and are found by the Authority to be consistent, in location, housing type, design, and other relevant criteria with the goals, objectives, and implementation strategy of that plan; or, a part of a redevelopment plan adopted in accordance with N.J.S.A. 55:14A-1 et seq., N.J.S.A. 40:55C-1 et seq., or similar laws and formally approved by the Authority on the basis of findings by the Authority that implementation of the plan will have a significant positive impact on the creation of sound neighborhood conditions and the creation of affordable housing opportunities in the city of Atlantic City;

v. Will further the development of Atlantic City in the ways specified by N.J.S.A. 5:12-160.

2. As to projects outside of Atlantic City, will lead to the revitalization of the urban areas of this State in the ways specified in N.J.S.A. 5:12-160. Those areas shall include, but not be limited to all municipalities qualifying for aid pursuant to N.J.S.A. 52:27D-178 et seq.

3. As to any project, the Authority will give consideration to the fact that the project utilizes sources of financial assistance in addition to assistance provided by the Authority.

#### 19:65-2.8 Public hearing

(a) In considering whether a particular project shall be an approved project, the Authority shall conduct in the jurisdiction of the local government unit in which the project is located such hearings as may be necessary or appropriate to determine whether the project satisfies the standards, criteria and guidelines set forth in the Act and these rules. The Authority may conduct such hearings directly or the Chairman may designate one member of the Authority, the Executive Director or any Authority employee to preside at the hearing. Unless required by law, such hearings shall be conducted as non-adversarial, informational proceedings and shall not be considered "contested cases" within the meaning of P.L.1968, c.410, as amended (N.J.S.A. 52:14B-1 et seq.). The fees and costs of such hearings, including the cost of any transcript, shall be borne by the applicant.

(b) The Authority shall give notice of any hearing at least 15 days before the date of the hearing by publication in a newspaper of general circulation in the municipality in which the project will be located, by posting a notice at the Authority's office and by delivering a copy of the notice to the clerk of the municipality in which the project will be located, the applicant and any other interested party. The notice shall include the time and place of the hearing, the names and addresses of the parties involved in the project and a brief description of the project. The Authority shall not be obligated to provide notice of any adjournment or adjournments of any scheduled hearing so long as it gives notice, as provided by these rules, of the new hearing date.

### SUBCHAPTER 3. CONTRACTS

#### 19:65-3.1 Contract as requirement to credit

No Licensee shall be entitled to any investment tax credit provided by N.J.S.A. 5:12-144.1 resulting from the purchase of bonds unless and until such licensee has entered into a contract. No termination of any contract shall be construed to in any way alter or diminish a licensee's tax obligations under the Act.

#### 19:65-3.2 Contract provisions

(a) Contracts shall include, without limitation, the following terms and provisions:

1. Unless a licensee's remaining investment alternative tax obligation is for less than 10 years in which case the term of the contract will be for such remaining lesser period, a term of not less than 10 continuous years from the year in which a licensee's investment alternative tax obligation was first incurred or a previous contract has expired or terminated pursuant to N.J.A.C. 19:65-3.2(b) or 3.2(c), such 10 year period to end at the end of the tenth calendar year after the year of commencement of such contract or the expiration or termination thereof, during which period the contracting licensee shall be obliged to purchase bonds in annual purchase amounts which will constitute a credit against not less than 50 percent of such licensee's investment alternative tax obligation in any such year or years, subject to any investment options otherwise provided in the contract. For the purposes hereof, the year in which a licensee first incurred an investment alternative tax obligation shall mean the year in which a tax obligation was incurred under N.J.S.A. 5:12-144.1a(1) and for which the money representing the purchase price of bonds is available to the Authority.

2. Unless waived by the licensee, that the initial contract may be terminated:

i. In the sole discretion of the Authority at the written request of a licensee, at the end of the fifth calendar year from commencement provided the licensee provides the Authority with one year prior written notice of such request;

ii. At the election of the licensee at the end of the eighth calendar year from commencement (for example, at the end of calendar year 1991 if the year of commencement was 1984) and thereafter by the licensee at the end of subsequent calendar years, upon not less than three years prior written notice by the licensee in any case; or

iii. In any event at any time by the Authority upon not less than one year prior written notice to the licensee by the Authority.

iv. In exercising its discretion under the provisions of i. above, the Authority shall consider, in addition to such other matters it may deem relevant, whether such termination will violate any agreement or covenant or impair any financial obligation of the Authority.

3. Unless waived by the licensee, that, at the election of the licensee, contracts other than the initial contract may be terminated by the licensee at the end of the fifth calendar year from commencement and thereafter by the licensee at the end of subsequent calendar years, upon not less than three years prior written notice by the licensee in any case or, in any event at any time, the contract may be terminated by the Authority upon not less than one year prior written notice by the Authority.

4. That, upon establishment of the grounds set forth in the Act:

i. The obligation of the licensee to pay for and take delivery of bonds be deferred in any year, but no deferral shall occur for more than two years consecutively and

ii. No deferral granted shall alter or reduce the total obligations to purchase bonds incurred by the licensee under the contract.

5. Such default and remedy provisions as the Authority shall deem appropriate including, without limitation, those set forth in the Act and all other cumulative remedies otherwise available at law or in equity.

6. That:

i. The licensee shall be obliged to purchase bonds as issued by the Authority without regard to the approved project for which the proceeds of such purchase shall be committed;

ii. Bonds available for purchase in any given year shall be allocated pro rata to licensees based upon the percentage that each licensee's contractual purchase obligation bears to the total available amount of bonds;

iii. Bonds pertaining to particular approved projects shall be allocated on a pro rata basis to each licensee without preference or priority; and

iv. To the extent the actual amount of bonds offered by the Authority in any year is less than the amount such licensee has agreed to purchase pursuant to its contract, such difference shall be paid by the licensee to the Authority and invested as permitted by N.J.S.A. 5:12-161(m) with interest on such investment payable to the licensee as provided therein.

7. That the bonds offered for sale by the Authority shall be issued to finance approved projects and shall otherwise have the attributes for bonds set forth in N.J.S.A. 5:12-162(d).

8. That each licensee shall continue to pay to the State Treasurer on a quarterly basis the amount imposed by N.J.S.A. 5:12-144.1, such funds to be placed in an escrow account as provided by N.J.S.A. 5:12-144.1(a)(2).

9. That, if approved by the Authority, the licensee may purchase through the Authority bonds or other obligations of the State, any political subdivision thereof, or any authority created by the State or any political subdivisions thereof in lieu of purchasing bonds as may be otherwise required by its contract for any period covered thereby, provided that such bonds fulfill purposes of the Authority and are in accordance with the requirements of the Act. Nothing in this paragraph shall preclude the Authority from requiring a licensee to purchase Authority bonds or to purchase through the Authority bonds or other obligations of the State, any political subdivision thereof, or any authority created by the State or any political subdivisions.

10. That, if a waiver of a licensee's obligation to purchase bonds is granted by the Authority in accordance with the provisions of the Act, the licensee may, in lieu of purchasing bonds as may be required by its contract for any period covered thereby, make an equivalent direct investment in, contribution to or guaranty in connection with an approved project.

11. That any obligation imposed by the contract to purchase bonds as a credit against payment by a licensee of any investment alternative tax owing by such licensee shall be the continuing responsibility of the licensee which is a party to the contract unless such obligation shall have been assumed by a licensee purchaser of the casino hotel or related property or some other provision for fulfillment of such obligation is made which is satisfactory to the Authority.

12. That the Authority may invest and reinvest and otherwise deal with any monies to be derived pursuant to the contract as permitted by N.J.S.A. 5:12-161(m), and that the Authority shall pay the licensee, not less often than annually and as reasonably practicable based upon maturities of investments, the portion of the interest on such monies to which the licensee is entitled.

13. That annual amounts due by licensees under the contract be paid by the licensee to the Authority upon entering the contract or at other times specified therein but not later than April 30 of each year; provided however that a licensee's obligation under N.J.S.A. 5:12-144.1(a)(2) shall not be altered by the provisions of any contract.

#### SUBCHAPTER 4. AFFIRMATIVE ACTION IN AUTHORITY FINANCED CONSTRUCTION PROJECTS AND LICENSEES' DIRECT INVESTMENT CONSTRUCTION PROJECTS

19:65-4.1 Set-aside for SBMWE Development Authority (Reserved)

19:65-4.2 Affirmative action

(a) In connection with construction projects:

1. The Authority shall ensure that minority or women's businesses receive at least 20 percent of the total expenditures on the total number of approved projects financed each year by or through the Authority or in the case of direct investments by licensees, 20 percent of the total expenditures on the total amount of such investments by licensees.

2. The Authority shall enforce the provisions of the Act with respect to the 20 percent set-aside described in (a) above, but the primary obligation to carry out the 20 percent minority or women's business set-aside rests with the borrowers of proceeds of bonds or the licensees in the case of direct investments in projects involving construction.

3. Each applicant and its respective contractors shall make every effort to use as many minority or women's businesses from as wide a market areas as is economically feasible to satisfy the set-aside requirements. This effort shall include the employment of such minority businesses with less experience than otherwise available nonminority enterprises, and each applicant shall be required to provide reasonable technical assistance to minority businesses as needed.

19:65-4.3 Enforcement and waivers

(a) The Authority shall take such steps as are necessary to ensure compliance with this subchapter.

(b) Under exceptional circumstances, after a public hearing with notice given as provided in N.J.A.C. 19:65-2.3(b) and upon determination by the Authority that there are not sufficient, relevant or qualified minority business enterprises, whose market areas include the project location, the Authority may waive up to 10 percent of the 20 percent set-aside requirement. In order to be entitled to such a waiver, the applicant shall comply with the timing requirements of and demonstrate and detail the matters set forth in N.J.S.A. 5:12-181(b)(2). Nothing herein shall preclude the Authority from hearing any information provided by any other person, or Federal, State or local governmental agency.

#### SUBCHAPTER 5. INVESTMENT BY LICENSEES PURSUANT TO N.J.S.A. 5:12-144

19:65-5.1 New Jersey Casino Control Commission rules

Eligibility of investments or contributions by licensees which were commenced or made prior to the effective date of the Act and the determination of which were pending before the New Jersey Casino Control Commission, shall be determined by the Authority by reference to the rules of the New Jersey Casino Control Commission set forth at N.J.A.C. 19:54-2.1 through and including N.J.A.C. 19:54-2.37, to the extent not inconsistent with the Act. All references in such rules to the "Commission" shall, except where the context clearly indicates otherwise, be deemed to refer to the "Authority". Nothing herein shall be construed to alter or disturb final determinations by the New Jersey Casino Control Commission as to matters within its jurisdiction prior to the effective date of these rules nor to permit licensees to seek determinations from the Authority as to matters which were not brought in a timely fashion before the New Jersey Casino Control Commission.

#### SUBCHAPTER 6. FEES AND CHARGES

19:65-6.1 Application fees

An initial non-refundable payment of \$500.00 shall accompany every application. Upon favorable preliminary review of an application pursuant to N.J.A.C. 19:65-2.4, an additional non-refundable application fee of \$1,000 shall be payable by an applicant before the hearing required by N.J.A.C. 19:65-2.8, which payment shall be credited toward any administrative fee if the project is approved by the Authority.

19:65-6.2 Administrative fees (Reserved)

#### SUBCHAPTER 7. DISQUALIFICATION, DEBARMENT AND SUSPENSION

19:65-7.1 Definitions

As used in this subchapter, the following words and terms shall have the following meanings unless a different meaning clearly appears from the context:

"Debarment" means an exclusion from Authority project contracting on the basis of a lack of responsibility evidenced by an offense, failure or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure, or inadequacy of performance.

"Person" means any natural person, corporation, partnership, company, firm, association or other entity.

"Authority project contracting" means any arrangement giving rise to an obligation to supply anything or to perform any service in connection with the construction, financing or administration of a project.

"Affiliates" means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

"Suspension" means an exclusion from Authority project contracting for a temporary period of time, pending the completion of an investigation or legal proceedings.

#### 19:65-7.2 Cause for debarment

(a) The Authority may decline to approve a project, give financial assistance to any project or participant therein, debar a person from contracting with the Authority or debar a person from Authority project contracting for the following causes:

1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract thereunder, or in the performance or such contract or subcontract;

2. Violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity or honesty;

3. Violation of the Federal or State antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276b, c);

4. Violation of any laws governing the conduct of elections of the Federal Government, State of New Jersey or of its political subdivisions;

5. Violation of the "Law Against Discrimination" (P.L.1945, c.169, N.J.S.A. 10:5-1 et seq., as supplemented by P.L.1975, c.127), or of the act banning discrimination in public works employment (N.J.S.A. 10:2-1 et seq.);

6. Violation of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor;

7. Violation of any laws governing the conduct of occupations or professions or regulated industries;

8. Violation of any laws which may bear upon a lack of responsibility or moral integrity;

9. Willful and unjustified failure to perform in accordance with contract specifications or with contractual time limits;

10. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts with the control of the person debarred;

11. Any other cause of such serious and compelling nature as may be determined by the Authority to warrant disqualification for assistance or debarment from contracting with the Authority or from Authority project contracting, even if such conduct has not been or may not be prosecuted as violations of such laws or contracts;

12. Debarment by any department or agency of the Executive Branch of State Government;

13. Debarment by the Department of Housing and Urban Development, Federal Housing Administration or any other instrumentality, agency or department of the United States Government.

#### 19:65-7.3 Conditions affecting debarment

(a) The following conditions shall apply concerning debarment:

1. Debarment shall be made only upon approval of the Authority, upon its own action or upon recommendation by the Executive Director of the Authority, except as otherwise provided by law.

2. The existence of any of the causes set forth in N.J.A.C. 19:65-7.2 shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the Authority, upon its own action or upon recommendation of the Executive Director of the Authority, unless otherwise required by law, and shall be based upon the best interests of the State.

3. All mitigating factors shall be considered in determining the seriousness of the offense, failure or inadequacy of performance and in deciding whether debarment is warranted.

4. The existence of a cause set forth in N.J.A.C. 19:65-7.2(a)1 through 7.2(a)8 shall be established upon the rendering of a final judgment or conviction including a guilty plea or a plea of nolo contendere by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the request of the debarred person unless other cause for debarment exists.

5. The existence of a cause set forth in N.J.A.C. 19:65-7.2(a)11 shall be established by evidence which the Authority determines to be clear and convincing in nature.

6. Debarment for the causes set forth in N.J.A.C. 19:65-7.2(a)11 shall be proper, provided that one of the causes set forth in N.J.A.C. 19:65-7.2(a)1 through 7.2(a)10 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such factors and additional facts.

#### 19:65-7.4 Procedures: Period of debarment

(a) When the Authority seeks to debar a person or its or his or her affiliates, such person or persons shall be furnished with a written notice stating that:

1. Debarment is being considered;

2. The reasons for the proposed debarment; and

3. An opportunity will be afforded to such person or persons for a hearing if the hearing is requested within seven days from the date of personal delivery or the date of mailing of such notice.

(b) All such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 54:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Where any State department or agency has already imposed debarment upon a party, the Authority may also impose a similar debarment without affording an opportunity for a hearing, provided the Authority furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in its or his or her behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

(c) Debarment shall be a reasonable, definitely stated period of time which as a general rule shall not exceed five years. Debarment for an additional period shall be permitted provided that notice thereof is furnished and the party is afforded an opportunity to present information in its or his or her behalf to explain why the additional period of debarment should not be imposed.

(d) Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced in the discretion of the Authority, upon its own action or upon recommendation of the Executive Director, upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction or judgment, actual change of ownership, management or control, or the elimination of the cause for which the debarment was imposed.

(e) A debarment may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of a person may be imputed to an affiliate of such person, where such conduct was accomplished within the course of its or his or her official duty or was effected by it or him or her with the knowledge or approval of such person.

#### 19:65-7.5 Causes for suspension of a person

In the public interest, the Authority may, upon approval of the Attorney General, suspend a person for any cause specified in N.J.A.C. 19:65-7.2 or upon a reasonable suspicion that such cause exists.

#### 19:65-7.6 Conditions for suspension of a person

(a) The following conditions concerning suspension shall be adhered to:

1. Suspension shall be imposed only upon approval of the Authority, upon its own action or upon recommendation by the Executive Director of the Authority, and upon approval of Attorney General, except as otherwise provided by law.

2. The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the Authority, upon its own action or upon recommendation by the Executive Director of the Authority, and at the discretion of the Attorney General, and shall be rendered in the best interests of the State

3. Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists or upon evidence adequate to create a reasonable suspicion that cause exists.

4. In assessing whether adequate evidence exists, consideration shall be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, and to inferences which may properly be drawn from the existence or absence of affirmative facts.

5. Reasonable suspicion of the existence of a cause described in N.J.A.C. 19:65-7.2(a)1 through 7.2(a)8 may be established by the rendering of a final judgment or conviction by a court or administrative agency or competent jurisdiction, by grand jury indictment, or by evidence that such violations of civil or criminal law did in fact occur.

5. A suspension invoked by another agency for any of the causes described in N.J.A.C. 19:65-7.2 may be the basis for the imposition of a concurrent suspension by the Authority, which suspension may be imposed when found to be in the best interest of the State.

#### 19:65-7.7 Procedures: Period of suspension; Scope of suspension affecting the suspension of a person

(a) The following provisions regarding procedures, period of suspension and scope of suspension shall be adhered to by the Authority:

1. Upon approval of the Attorney General, the Authority may suspend a person or its or his or her affiliates, provided that within 10 days after the effective date of the suspension, the Authority provides such party with a written notice:

i. Stating that a suspension has been imposed and its effective date;

ii. Setting forth the reasons for the suspension to the extent that the Attorney General determined that such reasons may be properly disclosed;

iii. Stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and

iv. Indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for a hearing if it, he or she so requests, or a statement declining to give such reasons and setting forth the Authority's position regarding the continuation of the suspension. Where a suspension by another agency has been the basis for suspension by the Authority, the Authority shall note that fact as a reason for its suspension.

2. A suspension shall not continue beyond 18 months from its effective date unless civil or criminal in regarding the alleged violation shall have been initiated within that period, or unless debarment action has been commenced. Whenever prosecution, civil action or debarment action has been initiated, the suspension may continue until the legal proceedings are completed.

3. A suspension may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be inputted to a person with whom it, he or she is affiliated, where such conduct was accomplished within the course of its, his or her official duty or was effectuated by it, him or her with the knowledge or approval of such person.

#### 19:65-7.8 Extent of debarment and suspension

The exclusion from Authority project contracting by virtue of debarment or suspension shall extend to all contracting and subcontracting within the control or jurisdiction of the Authority including any contracts which utilize Authority funds. When it is determined by the Authority, upon its own action or upon recommendation by the Executive Director of the Authority, to be essential to the public interest, and upon filing of a finding thereof by the Attorney General, and in the case of suspension, upon approval of the Attorney General, an exemption from total exclusion may be made by respect to a particular Authority contract.

#### 19:65-7.9 Notice to Attorney General and Treasurer

Insofar as practicable, prior notice of any proposed debarment or suspension shall be given by the Authority to the Attorney General and the State Treasurer. The Authority shall supply to the State Treasurer a list of all persons having been debarred or suspended in accordance with the procedures prescribed in these rules, including the effective date and term, if any, of such debarment or suspension. Such list shall at all times be available for public inspection.

#### 19:65-7.10 Lists of other agencies

Notwithstanding the failure of the Authority to debar or suspend any person pursuant to these rules, whenever the Authority participates in any program financed, issued or guaranteed by and department, agency or instrumentality of the State or the United States Government, it may rely on any list of persons suspended or debarred by such agency, department or instrumentality and prevent the listed person from participating in that program.

#### 19:65-7.11 Authority discretion

Nothing contained in this subchapter is intended to limit the discretion of the Authority in determining eligibility for financial or other assistance or to contract or refrain from contracting with any person. The purpose of this subchapter is to provide notice of certain offenses or failures which may result in disqualification for assistance or debarment. Project applicants and participants must meet any other applicable standards and policies.

#### 19:65-7.12 Executive Director to implement subchapter

The Executive Director is authorized to take all necessary action to implement and administer the provisions of this subchapter.

## SUBCHAPTER 8. WAIVERS

### 19:65-8.1 Waivers generally

Nothing in these rules shall be construed to prohibit the Authority from granting waivers from the provisions hereof or the provisions of the Act as expressly provided for in the Act.

### 19:65-8.2 Procedure

Any party desiring a waiver or release from the express provisions of any of these rules may submit a written request to the Authority to the attention of the Executive Director. Waivers may be granted by the Authority only when such waiver would not contravene the provisions of the Act and upon a finding that in granting the waiver the Authority will be consistent with the statutory purposes of the Authority.

# MISCELLANEOUS NOTICES

## ENVIRONMENTAL PROTECTION DIVISION OF WATER RESOURCES

### (a)

#### **Amendment to Mercer County Water Quality Management Plan**

##### **Public Notice**

K. Hovnanian at Lawrence Square, Inc. has petitioned Mercer County to amend the Mercer County Water Quality Management (WQM) Plan. This amendment, "An Amendment Concerning the Application of Wetlands Policy (Section 4.5.1, Point Source Control: Functional Programs and Agencies)" would change the existing wetlands policy and would provide for specific amendments. The first of which would permit a temporary disturbance of wetlands for the construction of a specified drainage pipe and outfall to serve the Lawrence Square Village development in Lawrence Township, Mercer County.

**This notice** is being given to inform the public that a plan amendment has been proposed for the Mercer County WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment is located at the Mercer County Planning Board, Room 420, County Administration Building, 640 South Broad Street, P.O. Box 8068, Trenton, N.J. 08650; and the NJDEP, Division of Water Resources, Bureau of Planning and Standards, 25 Arctic Parkway, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 a.m. and 4:00 p.m., Monday through Friday.

The Mercer County Planning Board will hold a **public hearing** on the proposed WQM Plan amendment. The public hearing will be held on Wednesday, May 14, 1986 at 8:30 a.m. in Room 211 of the Mercer County Administration Building. **Interested persons** may submit written comments on the amendment to the Secretary, Mercer County Planning

Board, at the Mercer County address cited above; and Mr. George Horzepa, Bureau of Planning and Standards, at the NJDEP address cited above. All comments must be submitted within thirty days following the public notice publication date or until 15 days following the public hearing(s), whichever is later. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Planning Board and County Executive with respect to the amendment request. In addition, if the amendment is adopted by Mercer County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice will also be considered by the NJDEP during its review. Mercer County and the NJDEP thereafter may approve and adopt this amendment without further notice.

### (b)

#### **Amendment to Cape May County Water Quality Management Plan**

##### **Public Notice**

**Take notice** that on March 3, 1986 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Cape May County Water Quality Management (WQM) Plan entitled "Septics System Management Program" which implements the on-site wastewater disposal systems program, was adopted by the Department. This implementation is through a cooperative agreement between the Cape May County Planning Board, Cape May County Municipal Utilities Authority, Cape May County Health Department and the Cape-Atlantic Soil Conservation District. These agencies agreed to coordinate their various programs and policies in order to protect water quality and quantity in the management of septic systems.

# REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

## A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

**At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the March 3, 1986 issue.**

**If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers.** A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(d).

### Terms and abbreviations used in this Index:

**N.J.A.C. Citation.** The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

**Proposal Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

**Document Number.** The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1986 d.100 means the one hundredth rule adopted in 1986.

**Adoption Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

**Transmittal.** A number and date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

**N.J.R. Citation Locator.** An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: FEBRUARY 18, 1986.**

**NEXT UPDATE WILL BE DATED MARCH 17, 1986.**

**Note:** If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

# N.J.R. CITATION LOCATOR

<u>If the N.J.R. citation is between:</u>	<u>Then the rule proposal or adoption appears in this issue of the Register</u>	<u>If the N.J.R. citation is between:</u>	<u>Then the rule proposal or adoption appears in this issue of the Register</u>
17 N.J.R. 859 and 1006	April 15, 1985	17 N.J.R. 2585 and 2710	November 4, 1985
17 N.J.R. 1007 and 1158	May 6, 1985	17 N.J.R. 2711 and 2814	November 18, 1985
17 N.J.R. 1159 and 1358	May 20, 1985	17 N.J.R. 2815 and 2934	December 2, 1985
17 N.J.R. 1359 and 1460	June 3, 1985	17 N.J.R. 2935 and 3032	December 16, 1985
17 N.J.R. 1461 and 1608	June 17, 1985	18 N.J.R. 1 and 128	January 6, 1986
17 N.J.R. 1609 and 1700	July 1, 1985	18 N.J.R. 129 and 234	January 21, 1986
17 N.J.R. 1701 and 1818	July 15, 1985	18 N.J.R. 235 and 376	February 3, 1986
17 N.J.R. 1819 and 1954	August 5, 1985	18 N.J.R. 377 and 446	February 18, 1986
17 N.J.R. 1955 and 2070	August 19, 1985	18 N.J.R. 447 and 506	March 3, 1986
17 N.J.R. 2071 and 2170	September 3, 1985	18 N.J.R. 507 and 582	March 17, 1986
17 N.J.R. 2171 and 2318	September 16, 1985	18 N.J.R. 583 and 726	April 7, 1986
17 N.J.R. 2319 and 2484	October 7, 1985	18 N.J.R. 727 and 868	April 21, 1986
17 N.J.R. 2485 and 2584	October 21, 1985		

<u>N.J.A.C. CITATION</u>		<u>PROPOSAL NOTICE (N.J.R. CITATION)</u>	<u>DOCUMENT NUMBER</u>	<u>ADOPTION NOTICE (N.J.R.CITATION)</u>
<b>ADMINISTRATIVE LAW—TITLE 1</b>				
1:1-3.8	Attorney disqualification from a case	18 N.J.R. 2(a)		
1:1-14.6	Consolidated cases involving exempt agencies	18 N.J.R. 130(a)	R.1986 d.79	18 N.J.R. 634(a)
1:2-2.1	Civil Service cases: pre-proposal concerning conference hearings	17 N.J.R. 2072(a)		
1:6A-5.4	Special education hearings: placement of child pending an appeal	17 N.J.R. 2586(a)	R.1986 d.85	18 N.J.R. 634(b)
1:6A-5.4	Special education hearings: stay of decision implementation	18 N.J.R. 584(a)		
1:30	Agency rulemaking	18 N.J.R. 3(a)	R.1986 d.60	18 N.J.R. 469(a)

(TRANSMITTAL 18, dated February 18, 1986)

<b>AGRICULTURE—TITLE 2</b>				
2:5-3	Avian influenza	Emergency	R.1986 d.58	18 N.J.R. 488(a)
2:22-3.1	Africanized honeybee control	18 N.J.R. 585(a)		
2:24-1	Shipment of bees into State	18 N.J.R. 586(a)		
2:32-2	Sire Stakes Program	18 N.J.R. 236(a)	R.1986 d.84	18 N.J.R. 635(a)
2:53-3	Milk sales below cost by stores	17 N.J.R. 3014(a)	R.1986 d.43	18 N.J.R. 476(a)
2:69-1.11	Commercial values of fertilizers	18 N.J.R. 588(a)		
2:71-2.2-2.7	"Jersey Fresh" Quality Grading Program	18 N.J.R. 588(b)		
2:71-2.28, 2.29, 3.21	Fees for inspection and grading of fruit and vegetables	18 N.J.R. 448(a)		
2:76-3.12	Farmland preservation programs: deed restrictions	18 N.J.R. 508(a)		
2:76-4.11	Municipally-approved preservation programs: deed restrictions	18 N.J.R. 511(a)		
2:76-6.15	Acquisition of development easements: deed restrictions	18 N.J.R. 513(a)		
2:90-1.5, 1.14	Soil conservation plan certifications; minor subdivisions	17 N.J.R. 2172(a)		
2:90-1.13	Soil conservation: extraction activity	17 N.J.R. 1957(a)		
2:90-2.15, 2.17, 2.18, 2.24	Soil and water conservation projects	18 N.J.R. 131(a)	R.1986 d.105	18 N.J.R. 638(a)
2:90-3.6, 3.9	Time extensions to complete conservation projects	18 N.J.R. 449(a)		

(TRANSMITTAL 37, dated February 18, 1986)

<b>BANKING—TITLE 3</b>				
3:1-2.24	Modification of Commissioner's Order restricting stock transfers	17 N.J.R. 2487(a)		
3:1-15	Availability of funds deposited in individual accounts: written disclosure	18 N.J.R. 13(a)	R.1986 d.73	18 N.J.R. 553(a)
3:6-10	Savings banks: unsecured days funds transactions	17 N.J.R. 2936(a)	R.1986 d.48	18 N.J.R. 477(a)
3:6-11	Short-term investments for trust cash	17 N.J.R. 2937(a)	R.1986 d.49	18 N.J.R. 477(b)
3:11-10	Savings banks: credit card services	18 N.J.R. 241(a)	R.1986 d.93	18 N.J.R. 639(a)
3:11-11	Leeway investments	18 N.J.R. 132(a)		
3:19-1	Home repair financing	18 N.J.R. 15(a)	R.1986 d.72	18 N.J.R. 555(a)
3:38-5.2	Return of borrower's commitment fee	17 N.J.R. 2488(b)		

(TRANSMITTAL 31, dated February 18, 1986)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
<b>CIVIL SERVICE—TITLE 4</b>				
4:1-2.1, 5.2, 11.2, 16, 24	Separations, demotions, layoffs; review and appeals	18 N.J.R. 450(a)		
4:1-8.4	Promotional examinations	18 N.J.R. 591(a)		
4:1-10.1, 10.2	Noncompetitive and labor appointments	17 N.J.R. 2937(b)	R.1986 d.117	18 N.J.R. 639(b)
4:1-15	Assignments and transfers	18 N.J.R. 592(a)		
4:1-23	Grievances and minor discipline	17 N.J.R. 2587(a)	R.1986 d.126	18 N.J.R. 640(a)
4:2-15.1	Assignments and transfers	18 N.J.R. 592(a)		
4:2-16	Separations and demotions	18 N.J.R. 450(a)		
4:2-23	Grievances and minor discipline	17 N.J.R. 2587(a)	R.1986 d.126	18 N.J.R. 640(a)
4:3-16	Separations and demotions	18 N.J.R. 450(a)		
4:3-23	Grievances and minor discipline	17 N.J.R. 2587(a)	R.1986 d.126	18 N.J.R. 640(a)
4:6	Overtime compensation	18 N.J.R. 515(a)		

(TRANSMITTAL 28, dated January 21, 1986)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
<b>COMMUNITY AFFAIRS—TITLE 5</b>				
5:10-24.4	Parking for handicapped residents of multiple dwellings	18 N.J.R. 16(a)	R.1986 d.61	18 N.J.R. 555(b)
5:11-2.1	Uniform Fire Code enforcement and relocation assistance	17 N.J.R. 2938(a)		
5:12-2.4, 2.5	Homelessness Prevention Program: eligibility and priorities	17 N.J.R. 2939(a)		
5:18-1.1, 1.4, 1.5, 1.6, 2.3, 4	Uniform Fire Code, Fire Safety Code	17 N.J.R. 1161(a)		
5:23-2.14, 4.18, 4.20	UCC: annual construction permits	17 N.J.R. 2490(a)		
5:23-2.15, 2.21	UCC: engineers and architects	17 N.J.R. 1033(a)		
5:23-3.11, 4.22, 4.24, 4.25	Uniform Construction Code: premanufactured construction	17 N.J.R. 1169(a)		
5:23-5.5, 5.7	Construction subcode licensure: transferability of experience	18 N.J.R. 594(a)		
5:23-5.11	Uniform Construction Code: revocation of licenses	18 N.J.R. 16(b)		
5:23-8	Asbestos hazard abatement subcode	18 N.J.R. 378(a)		
5:25	New Home Warranties and Builders' Registration	17 N.J.R. 2816(a)		
5:25	New Home Warranty and Builders' Registration rules: waiver of sunset provision	18 N.J.R. 218(a)		
5:25	New Home Warranty and Builders' Registration rules: waiver of sunset provision	18 N.J.R. 490(a)		
5:26	Planned real estate full disclosure	18 N.J.R. 392(a)	R.1986 d.129	18 N.J.R. 841(a)
5:80-4	Housing and Mortgage Finance	17 N.J.R. 1174(b)		
5:80-8	Housing and Mortgage Finance Agency: housing project occupancy requirements	17 N.J.R. 1620(a)		
5:80-20	HMFA housing projects: applicant and tenant income certification	17 N.J.R. 2321(b)		
5:80-20	HMFA housing projects: applicant and tenant income certification	18 N.J.R. 523(a)		

(TRANSMITTAL 38, dated February 18, 1986)

**DEFENSE—TITLE 5A**

(TRANSMITTAL 1, dated May 20, 1985)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
<b>EDUCATION—TITLE 6</b>				
6:11-2.1	Duties of State Board of Examiners	18 N.J.R. 595(a)		
6:12	Governor's Teaching Scholars Program	18 N.J.R. 135(a)		
6:20-2.13	Local districts: overexpenditure of funds	17 N.J.R. 2939(b)	R.1986 d.118	18 N.J.R. 643(a)
6:20-5.5	State aid for asbestos removal and encapsulation	18 N.J.R. 392(b)		
6:20-5.6	Minimum salaries and State aid	18 N.J.R. 393(a)		
6:21-16.1	Pupil transportation contracts	18 N.J.R. 138(a)		
6:22-1.6, 1.7, 2.4, 3.1	School facility planning; substandard facilities	18 N.J.R. 526(a)		
6:24	Controversies and disputes under school law	18 N.J.R. 404(b)		
6:43-1.3	Vocational and technical education: schools designated "other than full-time day"	17 N.J.R. 2940(a)	R.1986 d.119	18 N.J.R. 644(a)
6:68-5	Audio-visual public library services	18 N.J.R. 595(b)		
6:68-6	Institutional library services	18 N.J.R. 597(a)		
6:69-2	Library services to the disadvantaged	18 N.J.R. 599(a)		

(TRANSMITTAL 38, dated January 21, 1986)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
<b>ENVIRONMENTAL PROTECTION—TITLE 7</b>				
7:1-3	Interim Environmental Cleanup Responsibility Act rules	18 N.J.R. 242(a)	R.1986 d.87	18 N.J.R. 645(a)
7:1-3.20	ECRA review process: exempt industrial categories	18 N.J.R. 529(a)		
7:1-7	Hazardous substance discharges: reports and notices	17 N.J.R. 1826(a)		
7:1E-2.3	Discharge of hazardous substances: department response	18 N.J.R. 456(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
7:1F	Industrial Survey Project rules: waiver of Executive Order No. 66	17 N.J.R. 866(a)		
7:2-11.22	Bear Swamp East natural area	18 N.J.R. 139(a)		
7:2-11.22	Bear Swamp East natural area: public hearing	18 N.J.R. 532(a)		
7:2-12	Open lands management	17 N.J.R. 866(b)	R.1986 d.124	18 N.J.R. 645(a)
7:7-2.2	Wetlands maps in Ocean County	17 N.J.R. 1710(a)		
7:7E	Coastal Resource and Development revisions: extension of comment period	17 N.J.R. 1797(b)		
7:7E	Coastal Resource and Development Policies: correction to Code and proposed revisions	17 N.J.R. 1797(c)		
7:11-2.2, 2.3, 2.9	Sale of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoirs	18 N.J.R. 17(a)		
7:13-7.1	Flood hazard area along Long Brook and Manasquan River	17 N.J.R. 2324(a)	R.1986 d.50	18 N.J.R. 477(c)
7:13-7.1(c)29	Floodway delineations within Maurice River Basin	17 N.J.R. 2186(a)		
7:13-7.1(d)	Flood hazard delineations for Raritan River and Peters Brook	18 N.J.R. 600(a)		
7:13-7.1(d)14	Flood hazard along Lamington River in Morris County	17 N.J.R. 2324(b)	R.1986 d.123	18 N.J.R. 652(a)
7:13-7.1(d)47	Redelineation of Pine Brook in Bergen County	17 N.J.R. 2074(a)	R.1986 d.125	18 N.J.R. 652(b)
7:13-7.1(d)49	Floodway delineations in Union County	17 N.J.R. 1965(a)	R.1986 d.122	18 N.J.R. 651(a)
7:13-7.1(d)53	Floodway delineations in Raritan Basin (Project H)	17 N.J.R. 2492(a)	R.1986 d.51	18 N.J.R. 477(d)
7:13-7.1(i)	Floodway delineations in Central Passaic Basin Projects G and R	17 N.J.R. 1176(a)	R.1986 d.120	18 N.J.R. 650(a)
7:17	Hard shell clam depuration: pilot plant program	18 N.J.R. 140(a)	R.1986 d.83	18 N.J.R. 657(a)
7:17	Hard shell clam depuration: pilot plant program	18 N.J.R. 141(a)	R.1986 d.82	18 N.J.R. 653(a)
7:22	Wastewater treatment facilities: construction grants and loans	18 N.J.R. 243(a)		
7:24	Dam restoration grants	18 N.J.R. 395(a)		
7:25-4.17	Status of indigenous nongame wildlife	18 N.J.R. 601(a)		
7:25-8.1	Repeal clam dredging rule	18 N.J.R. 396(a)		
7:25-9	Minimum legal size for hard clams	18 N.J.R. 146(a)		
7:25-10	Possession of captive game animals and birds	18 N.J.R. 533(a)		
7:25-12.1	Sea clam quota			18 N.J.R. 711(b)
7:25-18	Marine fisheries	18 N.J.R. 102(a)	R.1985 d.121	18 N.J.R. 657(b)
7:25-19	Atlantic Coast harvest season	17 N.J.R. 2494(a)		
7:26-1.4, 1.6, 9.1, 12.1	Tolling agreements and reclamation of hazardous waste	17 N.J.R. 1968(a)		
7:26-1.4, 7.4, 9.1, 12.1, 12.8	Reuse of hazardous waste	17 N.J.R. 2716(a)		
7:26-1.7	Solid waste disposal: exemption from registration	17 N.J.R. 1368(a)		
7:26-1.8	Solid waste disposal: land application operations	17 N.J.R. 2945(a)		
7:26-2.6, 2.7	Disposal of asbestos waste	17 N.J.R. 2719(a)		
7:26-2.9	Closure and post-closure of sanitary landfills	18 N.J.R. 252(a)		
7:26-6.5	Solid waste flow: Ocean County	17 N.J.R. 2590(a)		
7:26-6.5	Solid waste flow: Camden County	17 N.J.R. 2591(a)		
7:26-7.4, 8.3, 8.15, 9.2, 10.6, 10.	Restriction of land disposal of hazardous waste	17 N.J.R. 779(a)	R.1986 d.135	18 N.J.R. 841(b)
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management	17 N.J.R. 2941(a)		
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management: extension of comment period	18 N.J.R. 254(a)		
7:27-16	Air pollution by volatile organic substances	17 N.J.R. 1969(a)		
7:27B-3	Determination of volatile organic substances from source operations	17 N.J.R. 2194(a)		
7:27B-4.6	Lead test paper procedure	17 N.J.R. 781(a)	Expired	
7:45	Delaware and Raritan Canal State Park: Review Zone rules	17 N.J.R. 1711(a)		
7:45-1, 2, 3	Delineation of Review Zone within Delaware and Raritan Canal State Park: reopening of comment period	18 N.J.R. 457(a)		

(TRANSMITTAL 39, dated February 18, 1986)

HEALTH—TITLE 8

8:9-1.11	Disposal of cremains: public hearing	17 N.J.R. 2835(a)		
8:21-10	Designated fluid milk products	18 N.J.R. 59(b)	R.1986 d.96	18 N.J.R. 660(a)
8:31-16.1	Hospital long-range strategic plans	18 N.J.R. 148(a)	R.1986 d.112	18 N.J.R. 675(a)
8:31-25.1	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:31A-7.4, 7.5, 7.14	SHARE: Medicaid rates and transfer of ownership	18 N.J.R. 150(a)	R.1986 d.140	18 N.J.R. 843(a)
8:31B-3.5, 3.22, 3.54	Hospital reimbursement: "efficiency standard"	17 N.J.R. 2946(a)	R.1986 d.114	18 N.J.R. 676(a)
8:31B-3.19	RIM methodology for nursing cost allocation: implementation date	17 N.J.R. 2464(a)		
8:31B-3.31, 3.51	Hospital reimbursement: graduate medical education	17 N.J.R. 2947(a)	R.1986 d.138	18 N.J.R. 843(b)
8:31B-3.76-3.82	Hospital reimbursement: URO performance evaluation; post-billing denial of payments	18 N.J.R. 150(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
8:33F-1.2, 1.6, App. B	Renal disease: regional end-stage services	17 N.J.R. 2948(a)	R.1986 d.113	18 N.J.R. 677(a)
8:34-1.8	Nursing home administrators: limitations on responsibility	18 N.J.R. 74(a)	R.1986 d.88	18 N.J.R. 678(a)
8:34-1.9	Reexamination for Nursing Home Administrator's License	18 N.J.R. 75(a)	R.1986 d.89	18 N.J.R. 678(b)
8:34-1.31	Licensing of nursing home administrators	17 N.J.R. 2212(a)		
8:41-8	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:43B-8.16	Obstetric and newborn services: use of oxytocic agents	17 N.J.R. 2213(a)		
8:43E-1	Hospital Policy Manual: Certificate of Need rules	17 N.J.R. 1220(a)		
8:44-2.10	Reportable occupational and environmental diseases and poisons	17 N.J.R. 1831(a)		
8:53	Implementation of Local Health Services Act	17 N.J.R. 2836(a)		
8:57-1.19, 1.20, -6	Cancer registry	17 N.J.R. 2836(b)		
8:60-1.1, 4.2, 4.4, 4.8, 5.2, 5.4, 5.7, 6.1, 6.3, 6.11	Asbestos licenses and permits	18 N.J.R. 156(a)		
8:65-8	Controlled dangerous substances: manufacture, distribution, disposal and nondrug use	17 N.J.R. 2721(a)	R.1986 d.65	18 N.J.R. 555(c)
8:65-10.1	Temporary placement of Meperidine analogs MPPP and PEPAP into Schedule I	17 N.J.R. 2950(a)	R.1986 d.66	18 N.J.R. 559(a)
8:65-10.1	Controlled dangerous substances: analogs of fentanyl	18 N.J.R. 254(b)		
8:65-10.1	Controlled dangerous substances: Parafluorofentanyl	18 N.J.R. 603(a)		
8:65-10.2	Removal of Nalmefene from Schedule II of controlled substances	18 N.J.R. 536(a)		
8:71	Generic drug list additions (see 17 N.J.R. 2042(b), 2556(b), 2769(a), 18 N.J.R. 182(a))	17 N.J.R. 1043(a)	R.1986 d.139	18 N.J.R. 845(a)
8:71	Generic drug list additions (see 17 N.J.R. 2557(a), 2769(b), 18 N.J.R. 183(a), 418(a))	17 N.J.R. 1733(a)		
8:71	Generic drug list additions (see 18 N.J.R. 417(a))	17 N.J.R. 2842(a)		
8:71	Generic drug list additions: public hearing	18 N.J.R. 537(a)		

## (TRANSMITTAL 36, dated February 18, 1986)

**HIGHER EDUCATION—TITLE 9**

9:2-2	Fund for Improvement of Collegiate Education: policies and procedures	17 N.J.R. 2724(a)	R.1986 d.99	18 N.J.R. 679(a)
9:2-11	Veterans Tuition Credit Program	17 N.J.R. 2844(a)	R.1986 d.103	18 N.J.R. 679(b)
9:7-2.3	Status of foreign nationals	18 N.J.R. 19(a)		
9:7-2.9	Student assistance programs: award combinations	17 N.J.R. 2725(a)		
9:7-3.1	Tuition Aid Grant Program: 1986-87 Award Table	18 N.J.R. 19(b)	R.1986 d.106	18 N.J.R. 680(a)
9:7-4.1, 4.2, 4.3, 4.5, 4.8	Garden State Scholarship Program	17 N.J.R. 2726(a)	R.1986 d.108	18 N.J.R. 680(b)
9:9-1.6	Guaranteed Student Loans and payment of insurance fee	17 N.J.R. 2727(a)	R.1986 d.102	18 N.J.R. 681(a)
9:9-1.16	Interest liability on defaulted student loans	17 N.J.R. 2728(a)	R.1986 d.101	18 N.J.R. 682(a)
9:9-9.2	Direct PLUS program and co-signer requirement	17 N.J.R. 2728(b)	R.1986 d.100	18 N.J.R. 682(b)
9:11, 12	Educational Opportunity Fund Program rules	17 N.J.R. 2214(b)	R.1986 d.107	18 N.J.R. 682(c)
9:12-1.4, 1.5	EOF program rules: correction	17 N.J.R. 2214(b)	R.1986 d.107	18 N.J.R. 682(c)
9:12-1.5, 2.3	Educational Opportunity Fund Program	17 N.J.R. 2214(b)		

## (TRANSMITTAL 30, dated January 21, 1986)

**HUMAN SERVICES—TITLE 10**

10:36-1	Patient supervision at State psychiatric hospitals	17 N.J.R. 2593(a)		
10:36-1	Patient supervision at State psychiatric hospitals: public hearing	18 N.J.R. 20(a)		
10:36-2	Clinical review procedures for special status psychiatric patients	17 N.J.R. 2951(a)		
10:42	Developmental Disabilities: Emergency Mechanical Restraint	17 N.J.R. 1832(a)		
10:49-1.1	Administration Manual: retroactive Medicaid eligibility	17 N.J.R. 2729(a)	R.1986 d.137	18 N.J.R. 845(c)
10:49-1.4	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)	R.1986 d.59	18 N.J.R. 559(b)
10:50	Transportation Services: HCFA Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:51-1, App. B, D, E	Pharmaceutical Services Manual	18 N.J.R. 255(a)	R.1986 d.136	18 N.J.R. 846(a)
10:51-1.14, 5.16	Pharmaceutical services: ineligible prescription drugs	17 N.J.R. 2730(a)		
10:51-4	Consultant Pharmacist Services	17 N.J.R. 2731(a)	R.1986 d.127	18 N.J.R. 847(a)
10:52-1.5, 1.17	Out-of-state inpatient hospital services	18 N.J.R. 538(a)		
10:52-1.16	Termination of pregnancy in licensed health care facilities	17 N.J.R. 1375(a)		
10:52-1.17	Out-of-state inpatient hospital services	17 N.J.R. 2225(a)	R.1985 d.704	18 N.J.R. 560(a)
10:52-1.21	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)	R.1986 d.59	18 N.J.R. 559(b)
10:53-1.14	Termination of pregnancy	17 N.J.R. 1375(a)		

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10:54	Physician Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:54-1.23	Termination of pregnancy	17 N.J.R. 1375(a)		
10:55	Prosthetic-Orthotic Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:56-3	Dental Services: procedure codes and descriptions	18 N.J.R. 154(a)	R.1986 d.128	18 N.J.R. 847(b)
10:57	Podiatry Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:58	Nurse Midwifery Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:59	Medical Supplier Manual: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:61	Independent Laboratory Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:61-1, 2	Independent laboratory services	18 N.J.R. 540(a)		
10:62	Vision Care: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:62-3	Vision Care Manual: billing procedures	17 N.J.R. 2731(b)	R.1986 d.90	18 N.J.R. 689(a)
10:63-3.2, 3.4, 3.5, 3.6, 3.8, 3.10-3.15, 3.18, 3.19	Long-term care facilities: CARE Guidelines	18 N.J.R. 257(a)		
10:63-3.17	Long Term Care Services: adjustments to base period data	17 N.J.R. 1736 (a)	R.1986 d.69	18 N.J.R. 561(a)
10:64	Hearing Aid Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:66	Independent Clinic Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:66-1.2, 1.6, 3.3	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)	R.1986 d.59	18 N.J.R. 559(b)
10:66-1.6	Termination of pregnancy	17 N.J.R. 1375(a)		
10:66-2, 3	Independent clinic services	18 N.J.R. 541(a)		
10:67	Psychological Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:81-10.7	PAM: eligibility for refugee and entrant programs	17 N.J.R. 2227(a)		
10:81-11.2, 11.7, 11.9, 11.20	PAM: child support paternity	17 N.J.R. 2845(a)	R.1986 d.55	18 N.J.R. 480(a)
10:81-11.3, 11.9	PAM: Social Security numbers; restriction of information	17 N.J.R. 2516(b)		
10:81-11.9	PAM: reimbursement by counties to State	17 N.J.R. 369(a)	R.1986 d.62	18 N.J.R. 562(a)
10:82-1.8, 1.9, 2.14, 2.20, 3.1, 3.2, 4.4, 4.6, 4.15, 4.17, 5.3, 5.10	ASH: conformity with Federal regulations	18 N.J.R. 260(a)		
10:82-2.19	ASH: recovery of overpayments	17 N.J.R. 2847(a)	R.1986 d.54	18 N.J.R. 481(a)
10:82-3.9, 3.11, 3.14, 4.13	ASH: evaluation of legally responsible relatives in AFDC	18 N.J.R. 20(b)	R.1986 d.115	18 N.J.R. 689(b)
10:82-5.10	ASH: emergency assistance	17 N.J.R. 2336(a)		
10:82-5.10	ASH: emergency assistance	17 N.J.R. 2337(a)		
10:82-5.10	ASH: emergency assistance	Emergency	R.1986 d.130	18 N.J.R. 849(a)
10:85-3.3	GAM: unearned income exclusion	17 N.J.R. 2849(a)	R.1986 d.57	18 N.J.R. 482(a)
10:85-3.3	General Assistance rate for residential health care			18 N.J.R. 712(b)
10:85-3.3, 5.2	GAM: hospital notices and billings	17 N.J.R. 2519(a)	R.1986 d.47	18 N.J.R. 483(a)
10:85-3.4	GAM: disposal of assets	17 N.J.R. 2952(a)	R.1986 d.98	18 N.J.R. 690(a)
10:85-3.4	GAM: parent-sponsored aliens	18 N.J.R. 21(a)	R.1986 d.76	18 N.J.R. 563(a)
10:85-4.6	GAM: emergency grants	Emergency	R.1986 d.131	18 N.J.R. 850(a)
10:85-5.3	GAM: nursing home bed-hold payments	17 N.J.R. 2953(a)	R.1986 d.70	18 N.J.R. 564(a)
10:85-10.1	GAM: "Workfare" defined	17 N.J.R. 2849(b)	R.1986 d.56	18 N.J.R. 483(b)
10:86	Repeal obsolete AFDC Work Incentive Program rules	17 N.J.R. 1838(b)		
10:90-2.2, 2.3, 2.4, 2.6, 3.3, 4.1-4.10, 5.1, 5.2, 5.6, 6.1, 6.2, 6.3	Monthly Reporting Policy Handbook	17 N.J.R. 1839(a)		
10:94-1.6, 3.14	Medicaid Only: ineligible individuals	17 N.J.R. 2522(a)	R.1986 d.71	18 N.J.R. 564(b)
10:94-4.1	Medicaid Only: resource eligibility	17 N.J.R. 2524(a)		
10:94-4.1	Medicaid Only: availability of resources in third-party situations	17 N.J.R. 2954(a)	R.1986 d.97	18 N.J.R. 691(a)
10:94-4.2, 4.3	Medicaid eligibility and nonliquid resources	18 N.J.R. 542(a)		
10:94-5.4, 5.5, 5.6, 5.7	Medicaid Only: eligibility computation amounts	18 N.J.R. 215(a)	R.1986 d.74	18 N.J.R. 565(a)
10:94-5.5	Medicaid Only: deeming of income	17 N.J.R. 2732(a)	R.1986 d.53	18 N.J.R. 484(a)
10:100-App. A	Supplemental Security Income payment levels	18 N.J.R. 216(a)	R.1986 d.75	18 N.J.R. 566(a)
10:109	Public Assistance Staff Development Program	18 N.J.R. 22(a)	R.1986 d.116	18 N.J.R. 691(b)
10:121-2	Adoption subsidy	18 N.J.R. 24(a)		
10:122-4.4	Child care centers: staff qualification	18 N.J.R. 155(a)	R.1986 d.109	18 N.J.R. 692(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
<b>CORRECTIONS—TITLE 10A</b>				
10A:4	Inmate discipline	18 N.J.R. 27(a)		
10A:4	Inmate discipline: public hearing	18 N.J.R. 544(a)		
10A:31-3.12, 3.15	Adult county facilities: medical screening of new inmates	17 N.J.R. 2343(a)		
10A:31-3.12, 3.15	Medical screening of new inmates in county facilities: public hearing	17 N.J.R. 2955(b)		
10A:31-6	Work Release Program	18 N.J.R. 604(a)		
10A:34	County correctional facilities	17 N.J.R. 2525(a)		

(TRANSMITTAL 12, dated December 16, 1985)

<b>INSURANCE—TITLE 11</b>				
11:1-20, 22	Cancellation and nonrenewal of property and casualty/liability policies	17 N.J.R. 2956(a)		
11:1-20, 22	Commercial policies: cancellation and nonrenewal	18 N.J.R. 457(b)		
11:2-19.2	Continuing education	18 N.J.R. 44(a)		
11:2-20	License renewal: continuing education requirement	17 N.J.R. 2962(a)		
11:3-20	Automobile insurers: financial disclosure and excess profit reporting	17 N.J.R. 2597(a)	R.1986 d.111	18 N.J.R. 692(b)
11:4-2	Replacement of life insurance and annuities	17 N.J.R. 887(a)		
11:4-2	Replacement of life insurance and annuities	17 N.J.R. 2344(a)		
11:4-15	Health insurance: benefits concerning treatment of alcoholism	18 N.J.R. 607(a)		
11:4-16.6	Daily hospital room and board coverage	18 N.J.R. 608(a)		
11:4-20	Coverage of the handicapped	18 N.J.R. 44(b)		
11:4-27	Reporting of liquor law liability loss experience	18 N.J.R. 45(a)		
11:5-1.3	Licensing of real estate brokers and salespeople	17 N.J.R. 2350(a)		
11:5-1.15	Real estate advertising	17 N.J.R. 2351(a)		
11:5-1.15, 1.25	Advertising of real estate; sale of interstate property	17 N.J.R. 666(a)	R.1986 d.91	18 N.J.R. 699(a)
11:5-1.20	Payment of fees prescribed by Real Estate License Act	17 N.J.R. 2353(a)	R.1986 d.92	18 N.J.R. 702(a)
11:5-1.28	Approved real estate schools: requirements	17 N.J.R. 376(a)	R.1986 d.63	18 N.J.R. 566(b)
11:17-1	Surplus lines insurance guaranty fund surcharge	17 N.J.R. 1045(b)		

(TRANSMITTAL 35, dated February 18, 1986)

<b>LABOR—TITLE 12</b>				
12:20-4.8	Temporary appointment to Unemployment Compensation Board of Review	18 N.J.R. 544(b)		
12:70	Field sanitation for seasonal farm workers	17 N.J.R. 1860(a)		
12:120-1.1, 4.2, 4.4, 4.8, 5.2, 5.4, 5.7, 6.1, 6.3, 6.11	Asbestos licenses and permits	18 N.J.R. 156(a)		
12:195-1.3, 1.4, 1.7, 1.9, 1.12, 1.13, 1.14, 2.1, 3.1, 3.3, 3.9, 3.10, 3.14, 4.2, 4.6, 5.11, 6	Carnival-amusement rides	18 N.J.R. 609(a)		
12:235	Practice and procedure before Division of Workers' Compensation	17 N.J.R. 2081(a)		

(TRANSMITTAL 28, dated February 18, 1986)

<b>COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A</b>				
12A	Departmental rules; small business set-aside contracts	16 N.J.R. 1955(a)	R.1985 d.421	17 N.J.R. 2683(a)

<b>LAW AND PUBLIC SAFETY—TITLE 13</b>				
13:1-4.6	Police training: certification of firearms instructors	18 N.J.R. 397(a)		
13:2-5.2	Alcoholic beverage control: special concessionaire permit	18 N.J.R. 545(a)		
13:3-3.4, 3.8, 3.17, 7.9	Amusement games control	18 N.J.R. 613(a)		
13:20-25	Approval of motor vehicle safety glazing materials and other equipment	18 N.J.R. 47(a)	R.1986 d.80	18 N.J.R. 703(a)
13:20-33.1	Motor vehicle reinspection centers: fees for initial inspections	18 N.J.R. 158(a)	R.1986 d.104	18 N.J.R. 703(b)
13:20-33.6	Glazing inspection standards for motor vehicles	17 N.J.R. 894(a)		
13:21-7	Student driver permits	18 N.J.R. 48(a)	R.1986 d.81	18 N.J.R. 703(c)
13:21-8.2	Photo IDs and driver license application procedure	18 N.J.R. 49(a)	R.1986 d.68	18 N.J.R. 567(a)
13:27	Rules of Board of Architects	17 N.J.R. 2851(b)		
13:29-1.14	Board of Accounting licenses: notification requirement concerning convictions	18 N.J.R. 264(a)		
13:30-2.2, 2.3, 2.18, 8.1	Board of Dentistry registration fees	18 N.J.R. 398(a)		
13:31-1.11	Fees for electrical contractor's license	18 N.J.R. 462(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
13:35-2.15	Physician-nurse anesthetist standards	17 N.J.R. 796(a)	Expired	
13:35-3.11	Licensure of foreign medical school graduates	18 N.J.R. 50(a)	R.1986 d.67	18 N.J.R. 568(a)
13:35-4.2	Termination of pregnancy	18 N.J.R. 614(a)		
13:35-6.4	Pre-proposal: professional conduct of Medical Board licensees	17 N.J.R. 894(b)		
13:37-6.2	Delegation of nursing tasks by RPNs	17 N.J.R. 2354(a)		
13:37-6.3	Nursing procedures: administration of renal dialysis treatment	18 N.J.R. 398(b)		
13:39A-1	Board of Physical Therapy: organization and administration	17 N.J.R. 2355(a)		
13:39A-2	Authorized practice by physical therapists	17 N.J.R. 2356(a)		
13:39A-3	Unlawful practices by physical therapists	17 N.J.R. 2358(a)		
13:39A-3.2	Pre-proposal: fee splitting and kickbacks by physical therapists	17 N.J.R. 2360(a)		
13:39A-4	Unlicensed practice of physical therapy	17 N.J.R. 2361(a)		
13:39A-5	Physical therapy applicants: required credentials	17 N.J.R. 2362(a)		
13:41-4	Board of Professional Planners: readopt preparation of site plan rules	17 N.J.R. 1240(a)	R.1986 d.110	18 N.J.R. 704(a)
13:44-2.3, 2.11	Advertising by licensed veterinarians	18 N.J.R. 399(a)		
13:44C-1.1	Audiology and Speech Language Pathology Advisory Committee: fees and charges	17 N.J.R. 1062(a)		
13:44D	Public moving and warehousing	17 N.J.R. 1382(a)		
13:45A-2	Motor vehicle advertising practices	17 N.J.R. 2861(a)		
13:45A-24	Sale of grey market merchandise	17 N.J.R. 2866(a)		
13:46-12.1, 12.6	Medical examination of boxers	18 N.J.R. 617(a)		
13:54	Regulation of firearms businesses	18 N.J.R. 51(a)		
13:70-12.1, 12.2	Thoroughbred racing: claiming privileges	18 N.J.R. 546(a)		
13:70-3.47	Thoroughbred racing: Coggins test	18 N.J.R. 401(a)		
13:70-12.16	Thoroughbred racing: filing of claims	18 N.J.R. 402(a)		
13:71-6.24	Harness racing: Coggins test	18 N.J.R. 402(b)		

(TRANSMITTAL 39, dated February 18, 1986)

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14:3-4.7	Adjustment of utility bills	17 N.J.R. 2236(a)		
14:3-7.15	Discontinuance of residential service: notice to local fire officials	18 N.J.R. 463(a)		
14:6-1.1	Intrastate transportation of natural gas	17 N.J.R. 2740(a)	R.1986 d.46	18 N.J.R. 486(a)
14:10-5	Inter LATA telecommunications carriers	17 N.J.R. 2012(a)		
14:18-1.2, 3.9	Cable TV: Service outages	18 N.J.R. 619(a)		
14:18-11	Pre-proposal: Renewal of CATV municipal consents and certificates of approval	17 N.J.R. 1394(a)		

(TRANSMITTAL 26, dated December 16, 1985)

**ENERGY—TITLE 14A**

(TRANSMITTAL 18, dated February 18, 1986)

**STATE—TITLE 15**

(TRANSMITTAL 16, dated February 18, 1986)

**PUBLIC ADVOCATE—TITLE 15A**

(TRANSMITTAL 1, dated March 20, 1978)

**TRANSPORTATION—TITLE 16**

16:28-1.2	Temporary speed rate on portion of I-80	18 N.J.R. 546(b)		
16:28-1.2, 1.3, 1.79	Speed rates along I-80, I-287, and Route 94	18 N.J.R. 621(a)		
16:28-1.23, 1.25, 1.57, 1.79, 1.81	Speed rates on Routes 18, 23, U.S. 30, 94, and 49	18 N.J.R. 463(b)		
16:28-1.25	Wantage school zone along Route 23 in Sussex County	18 N.J.R. 547(a)		
16:28-1.41, 1.51, 1.75	Speed rates on U.S. 9 in Lakewood, Route 36 in Long Branch, and Route 55 in Cumberland, Salem and Gloucester counties	18 N.J.R. 465(a)		
16:28A-1.4, 1.7, 1.52	No parking zones on Route 4 in Englewood, U.S. 9 in Howell and Route 173 in Hunterdon county	18 N.J.R. 466(a)		
16:28A-1.7, 1.9, 1.21, 1.33, 1.34, 1.39, 1.40	Bus stop zones in Atlantic, Bergen, Camden, Gloucester, Ocean and Salem counties	18 N.J.R. 158(b)	R.1986 d.94	18 N.J.R. 704(b)
16:28A-1.7, 1.18, 1.25, 1.33	Parking along U.S. 9, Routes 27, 35, and 47	18 N.J.R. 622(a)		
16:28A-1.13, 1.21, 1.23, 1.26, 1.42	No parking zones along U.S. 22 in Phillipsburg, U.S. 30 in Galloway Twp., Routes 33, 36 and 79 in Monmouth county	18 N.J.R. 547(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:28A-1.23, 1.34	No parking zones along Routes 33 in Hightstown and 49 in Pennsville	18 N.J.R. 549(a)		
16:28A-1.46	No parking zone along U.S. 130 in Salem county	18 N.J.R. 549(b)		
16:28A-1.71	Bus stops along Route 67 in Fort Lee	17 N.J.R. 2967(a)	R.1986 d.44	18 N.J.R. 487(a)
16:29-1.6, 1.7, 1.52-1.56	No passing zones along Routes 34, 36, 181, 70, U.S. 30, 57 and 77	18 N.J.R. 550(a)		
16:29-1.49, 1.50, 1.51	No passing zones on Routes 26, 91 and 35	17 N.J.R. 2967(b)	R.1986 d.45	18 N.J.R. 487(b)
16:29-1.51, 1.57	No passing zones along Routes 35 and 28	18 N.J.R. 623(a)		
16:30-1.6	One-way traffic along Route 35 in Shrewsbury	18 N.J.R. 551(a)		
16:30-2.10	Elmwood Park: stop intersection at Columbia and Parkview	18 N.J.R. 551(b)		
16:30-3.1	Left turns on Route 35 in Shrewsbury	18 N.J.R. 552(a)		
16:30-3.5	Bus and carpool lane on I-95 approach to GWB	18 N.J.R. 624(a)		
16:31-1.3, 1.18	Left turns on U.S. 46 and Route 31	18 N.J.R. 625(a)		
16:31-1.4	Turns on Route 35 in Shrewsbury	18 N.J.R. 467(a)		
16:41-8.9	Outdoor advertising permit fees for vegetation control	18 N.J.R. 625(b)		
16:51	Pre-proposal: Practice before Office of Regulatory Affairs	17 N.J.R. 2867(a)		
16:53-9.1	Autobuses: public liability insurance	18 N.J.R. 626(a)		
16:54	Licensing of aeronautical facilities	18 N.J.R. 403(a)		
16:72	NJ TRANSIT: procurement policies and procedures	18 N.J.R. 404(a)	R.1986 d.134	18 N.J.R. 847(c)

## (TRANSMITTAL 37, dated February 18, 1986)

## TREASURY-GENERAL—TITLE 17

17:1-1.3	Due date for quarterly pension transmittals	18 N.J.R. 59(a)	R.1986 d.86	18 N.J.R. 706(a)
17:1-2.3	Alternate Benefit Program: salary reduction and deduction	17 N.J.R. 2350(b)		
17:1-12.7	Enrollment in Police and Firemen's Retirement System	18 N.J.R. 626(b)		
17:4-1.4	Police and firemen's retirement system: election of member-trustee	18 N.J.R. 468(a)		
17:5-5.12	State Police disability retirant rule	17 N.J.R. 2746(b)		
17:12-2.11	Out-of-state vendors: reciprocal action in public contracts	18 N.J.R. 264(b)	R.1986 d.132	18 N.J.R. 848(a)
17:12-5.1, 5.2	Cooperative purchasing and independent schools of higher education	18 N.J.R. 265(a)	R.1986 d.133	18 N.J.R. 848(b)

## (TRANSMITTAL 37, dated February 18, 1986)

## TREASURY-TAXATION—TITLE 18

18:7-1.16, 5.2, 8.4, 8.5, 13.7	Financial business corporations	18 N.J.R. 627(a)		
18:12-7.12	Homestead rebate claim: filing extension	18 N.J.R. 107(a)	R.1986 d.64	18 N.J.R. 568(b)

## (TRANSMITTAL 34, dated February 18, 1986)

## TITLE 19 SUBTITLES A-L—OTHER AGENCIES (Except Casino Control Commission)

19:4-4.142	Meadowlands: granting zoning variances	17 N.J.R. 1871(a)		
19:4-6.28	Meadowlands: official zoning map change	17 N.J.R. 1872(a)		
19:25-9.2	Designation of joint campaign fund (Form SR-1): filing liability	18 N.J.R. 630(a)		
19:25-10.6	Reporting of contributions received prior to an election	18 N.J.R. 630(b)		
19:25-15.48—15.51	Inaugural event contributions	18 N.J.R. 631(a)		
19:25-17.1	Failure to answer complaint of the commission	18 N.J.R. 632(a)		

## (TRANSMITTAL 30, dated February 18, 1986)

## TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION

19:43, 45	Pre-proposal: Rules governing casino industry bus operations	17 N.J.R. 1401(a)		
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19:45-1.11	Casino licensee's organization and surveillance personnel	17 N.J.R. 2969(a)		
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## NOTES

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