

CHAPTER 82**STATEWIDE RESPITE CARE PROGRAM****Authority**

N.J.S.A. 30:4F-7 et seq.; Reorganization Plan No. 001-1996.

Source and Effective Date

R.1993 d.256, effective May 7, 1993.
See: 25 N.J.R. 876(a), 25 N.J.R. 2557(b).

Executive Order No. 66(1978) Expiration Date

Chapter 82, Statewide Respite Care Program, expires on May 7, 1998.

Chapter Historical Note

Chapter 82, Statewide Respite Care Program, was originally codified in Title 10 as Chapter 14, Statewide Respite Care Program. Chapter 14, originally Emergency and Temporary Housing Projects was filed and became effective prior to September 1, 1969. Chapter 14, Emergency and Temporary Housing Projects, was repealed by R.1983 d.523, effective November 21, 1983. See: 15 N.J.R. 1430(a), 15 N.J.R. 1944(a).

Chapter 14, Statewide Respite Care Program, was adopted as R.1988 d.226, effective May 16, 1988. See: 19 N.J.R. 1712(a), 20 N.J.R. 1107(a).

Pursuant to Executive Order No. 66(1978), Chapter 14 was readopted as R.1993 d.256, effective May 7, 1993. See: 25 N.J.R. 876(a), 25 N.J.R. 2257(b).

Pursuant to Reorganization Plan No. 001-1996, Chapter 14, Title 10, Statewide Respite Care Program, was recodified to Chapter 82, Title 8, effective October 15, 1997. As a part of the recodification, administrative changes were made to reflect Department of Health and Senior Services jurisdiction. See: 29 N.J.R. 4679(a).

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SUBCHAPTER 1. GENERAL PROVISIONS**8:82-1.1 Purpose**

Pursuant to N.J.S.A. 30:4F-7 et seq., the Department of Health and Senior Services intends to use the Statewide Respite Care Program to provide relief and support to family or other uncompensated caregivers from the demands of the daily care of frail elderly and other functionally impaired persons.

8:82-1.2 Scope of service

(a) This chapter shall apply to all activities and persons participating in the Statewide Respite Care Program, including but not limited to applicants, eligible persons, caregivers and sponsors.

(b) Pursuant to N.J.S.A. 30:4F-7 et seq., the New Jersey Statewide Respite Care Program is limited to the provision of and payment for short-term, intermittent respite care for frail, elderly and functionally impaired adults.

Amended by R.1993 d.256, effective June 7, 1993.
See: 25 N.J.R. 876(a), 25 N.J.R. 2557(b).

8:82-1.3 Target population; priority of services

(a) The target population is limited to those individuals providing the basic, daily care to the eligible person, who are at risk of severe illness, fatigue, or stress due to the demands of their caregiving responsibilities.

(b) Situations to be given priority in receiving services are those where the eligible person is at risk of institutionalization due to the temporary incapacity of a caregiver.

Amended by R.1993 d.256, effective June 7, 1993.
See: 25 N.J.R. 876(a), 25 N.J.R. 2557(b).

8:82-1.4 Definitions

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

“Applicant” means a functionally impaired person 18 years of age or older who would be at risk of long-term institutional placement if his or her regular caregiver could

not continue in that role without the assistance of temporary home and community support services, including respite care.

“Campership” means a day or overnight accredited camp program for functionally impaired adults.

“Caregiver” means a spouse, parent, child, relative, or other person who is 18 years of age or older and who has the primary responsibility of providing daily care for the eligible person and who does not receive financial remuneration for the care.

“Co-payment” means financial participation in service costs by the eligible person according to a sliding fee scale.

“Companion or sitter services” means a non-medical, basic supervision service which is provided for the eligible person in his or her home on a short-term, intermittent basis. Companion or sitter services are intended for those eligible persons who do not require any personal care assistance, medical assistance, or housekeeping services during the time when respite care services are provided.

“Department” means the New Jersey Department of Health and Senior Services.

“Eligible person” means an applicant who meets the eligibility criteria as set forth in this chapter.

“Emergency” means providing respite care in the case of a sudden or unexpected event that impairs the ability of the caregiver to continue in that role. Such circumstances include, but are not limited to, sudden illness of a caregiver, the caregiver’s spouse or children; a natural disaster; a death in the family of the caregiver; or an accident affecting the caregiver, the caregiver’s spouse, or the caregiver’s children.

“Functionally impaired” means the presence of a chronic physical or mental disease, illness, or disability as certified by the physician or a sponsor-provided assessment team, which causes physical dependence on others, and which leaves a person unable to attend to his or her basic daily needs without the substantial assistance or continuous supervision of a caregiver.

“Homemaker/home health aide services” means services which include personal care (that is eating, grooming, hygiene and toileting), household tasks, and activities provided to eligible persons in their homes.

“Homemaker services” means services which include personal care, household tasks, and activities provided to recipients in their homes by a homemaker or home health agency.

“Liquid resources” means any checking accounts, savings accounts, individual retirement accounts, certificates of deposits, stocks, or bonds, that can be converted into cash within 20 working days.

“Medical day care” means a program of medically supervised, health related services provided in an ambulatory care center to persons who are nonresidents of that center.

“Peer support” means the provision of mutual support services for caregivers involved in the Statewide Respite Care Program.

“Private Duty Nursing” means hourly service delivered by licensed nursing personnel in the eligible person’s home.

“Provider” means a person, public agency, private non-profit agency, or proprietary agency which is licensed or certified or otherwise approved by the Commissioner to supply any service or combination of services described under “respite” as defined below.

“Respite” or “respite care” means the provision of temporary, short-term care for, or the supervision of, an eligible person on behalf of the caregiver in emergencies or on an intermittent basis to relieve the daily stress and demands of caring for the functionally impaired adult. Respite may be provided hourly, daily, overnight, or on weekends and may be provided by paid or volunteer staff. The term includes, but is not limited to, companion or sitter services, homemaker and personal care services, adult day care, short-term inpatient care in a licensed nursing facility, residential health care facility or overnight camp program, private duty nursing and peer support and training for caregivers.

“Service plan” means a written document agreed upon by the eligible person, the caregiver, and the sponsor which specifies the type(s), frequency, and duration of services to be provided. The service plan shall take into account other services available to the eligible person and his or her caregiver.

“Social adult day care” means a comprehensive social and health related outpatient program for the frail, moderately handicapped, slightly confused recipient who needs care during the day.

“Sponsor” means a county or regional agency, either public or private non-profit, which contracts with the Department to administer the local program and arranges for services for eligible persons after making an eligibility determination.

Amended by R.1988 d.505, effective November 7, 1988.
See: 20 N.J.R. 105(a), 20 N.J.R. 2774(a).

Added “liquid resources”.

Amended by R.1993 d.256, effective June 7, 1993.
See: 25 N.J.R. 876(a), 25 N.J.R. 2557(b).

SUBCHAPTER 2. ADMINISTRATIVE ORGANIZATION

8:82-2.1 Department of Health and Senior Services

The Department is the administrative unit of the State government which has control over the administration of the Statewide Respite Care Program. Under the terms of N.J.S.A. 30:4F-7 et seq., the Department is responsible for the general policies governing administration of the New Jersey Statewide Respite Care Program, for effecting the issuance of rules and procedures in accordance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) for implementing the statutory provisions and for statewide coordination of the program.

8:82-2.2 County administration

The Advisory Council of the Area Agency on Aging in each county shall be responsible for choosing the sponsor agency in its respective county subject to confirmation by the Department. The sponsor agency shall administer the Statewide Respite Care Program in that county and process applications for services.

SUBCHAPTER 3. APPLICATION PROCESS

8:82-3.1 General provisions

(a) The application process includes all activity related to a request for eligibility determination under the Statewide Respite Care Program. The process begins with the receipt of an application by a sponsor agency and continues in effect until there is an official disposition of the eligibility request from that sponsor agency.

(b) All applications for eligibility determination shall be made to the sponsor agency in the county where the applicant resides. The sponsor agency shall make a determination of eligibility and perform appropriate assessments within 30 days after the receipt of an application.

Amended by R.1993 d.256, effective June 7, 1993.
See: 25 N.J.R. 876(a), 25 N.J.R. 2557(b).

8:82-3.2 Authorized agent

(a) Where the applicant is incompetent or incapable of filing an application on his or her own behalf, the sponsor agency shall recognize any of the following persons, listed in order of priority, as an authorized agent for the purpose of initiating such application:

1. A legal guardian;
2. A close relative of the applicant by blood or marriage, such as parent, spouse, son, daughter, brother or sister;

3. A representative payee designated by the Social Security Administration;

4. A staff person of a public or private social service agency, of which the person is a client, who has been designated by the applicant to so act; or

5. A friend of the applicant.

Amended by R.1993 d.256, effective June 7, 1993.
See: 25 N.J.R. 876(a), 25 N.J.R. 2557(b).

8:82-3.3 Responsibilities in the application process

(a) Pursuant to statutory authority, the Department establishes procedures for the application process consistent with law and supervises the operation with the policy and procedures so established.

(b) The sponsor has the responsibility in the application process to:

1. Explain the purposes and eligibility requirements of the program and indicate the applicant's rights and responsibilities under its provisions;
2. Accept and process applications; and
3. Maintain files including applications and supporting documents for all applicants.

(c) The applicant has the responsibility to:

1. Complete the eligibility application forms truthfully, legibly, and accurately; and
2. Provide the sponsor agency with documentation that supports statements made on the eligibility application, when required.

(d) The applicant/eligible person has the responsibility to notify the sponsor agency whenever one of the following occurs:

1. His or her address changes;
2. His, her or their annual income changes to an amount that will change their eligibility for services or their co-payment requirement;
3. His or her marital status changes; or
4. His or her liquid resources change to exceed \$40,000.

(e) The sponsor agency shall provide the applicant with the written statement of eligibility determination within 30 days of receipt of the application.

1. When the respite services are terminated, reduced or suspended, the "eligible person" shall be given written notification of the determination and the right to a hearing as provided in N.J.A.C. 8:82-7.

Amended by R.1993 d.256, effective June 7, 1993.
See: 25 N.J.R. 876(a), 25 N.J.R. 2557(b).

SUBCHAPTER 4. ELIGIBILITY

8:82-4.1 Eligibility standards

(a) For the purposes of the Statewide Respite Care Program, an eligible person shall meet the following eligibility standards:

1. An eligible person shall be 18 years of age or older, functionally impaired, and being cared for at home by a caregiver who is not remunerated for his or her services; and is at risk of long-term institutional placement if his or her regular caregiver could not continue in that role;

2. The maximum income level, not including the income of the spouse or family of the individual, shall be 300 percent of the Federal Supplemental Security Income standard for an individual living alone, in effect under section 1611(a)(1)(A) of the Social Security Acts (as increased pursuant to section 1617 of such Act). In the case of an individual and a spouse who are both dependent on the caregiver, the couple's combined income shall be subject to this same income standard; and

3. The eligible person shall be a resident of the State of New Jersey.

4. An eligible person shall have liquid resources (as declared by that individual) that do not exceed \$40,000. In the case of an individual and a spouse who are both dependent on the caregiver, the couple's combined liquid resources shall not exceed \$40,000.

Amended by R.1988 d.505, effective November 7, 1988.
See: 20 N.J.R. 1051(a), 20 N.J.R. 2774(a).

Added (a)4.

Amended by R.1993 d.256, effective June 7, 1993.
See: 25 N.J.R. 876(a), 25 N.J.R. 2557(b).

8:82-4.2 Confidentiality and disclosure of information

(a) All personally identifiable information regarding applicants, eligible persons or caregivers obtained or maintained under the Statewide Respite Care Program shall be confidential and shall not be released without the written consent of the applicant, eligible person, their authorized agent, or caregiver.

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

1. The release of statistical or summary data or information in which applicants or eligible persons cannot be identified.

2. The release to the Attorney General, or other legal representative of the state, of information or files relating to the claim of any applicant, eligible person, or their authorized agent challenging the program's statute, rules, or a determination made pursuant thereto, or against whom an action or proceeding for the recovery of incorrectly paid benefits has been instituted.

3. The release of information or files to the State Treasurer, the Commissioner of the Department or other governmental agency, or to their duly authorized representatives, for an audit, review of expenditures or similar activity authorized by law.

4. The release of information or files to any law enforcement authority charged with the investigation or prosecution of violations of the criminal laws of this State.

Amended by R.1993 d.256, effective June 7, 1993.
See: 25 N.J.R. 876(a), 25 N.J.R. 2557(b).

8:82-4.3 Primary and secondary payment

If an eligible person's respite service costs are covered in whole or in part by another State or Federal government program or insurance contract, the government program or insurance carrier shall be the primary payer and the Statewide Respite Care Program shall be the secondary payer.

SUBCHAPTER 5. SPONSORS AND PROVIDERS

8:82-5.1 Qualifications and requirements of sponsors

(a) The Commissioner, based upon the recommendations from the Advisory Council of the Area Agency on Aging, shall designate one sponsor agency for the Statewide Respite Care Program in each county in New Jersey, subject to the following qualifications:

1. A sponsor agency shall be a public or private nonprofit agency and shall contract annually with the Department to administer the local respite program.

2. Each sponsor agency shall demonstrate its ability to purchase respite services from provider agencies and individuals in the county and shall provide evidence of its capability to deliver the full range of respite services mandated by the program as defined in N.J.A.C. 8:82-1.4, the definition of Respite or Respite Care.

(b) Each sponsor agency shall satisfy the following requirements:

1. Annually determine the maximum number of eligible persons to be served in its respective county based on the financial allocation made by the Department. The sponsor shall not admit or serve more eligible persons than can be afforded with available resources.

2. Maintain a waiting list of those persons eligible for respite care, but not able to receive it.

3. Determine the eligibility of all applicants for service under the Statewide Respite Care Program.

4. Determine sources of payment for respite services for each eligible person and assess and collect all co-payments through retrospective billing.

5. Verify the income of each eligible person applying for services under the Statewide Respite Care Program and determine the eligible person's ability to contribute to the cost of the respite services. This income verification shall be determined on an annual basis, or sooner if circumstances change.

6. Develop a Service Plan for each person served under the Statewide Respite Care Program.

7. Submit monthly statistical and financial reports on the respite program in its respective county to the Department.

8. Agree to comply with the program rules contained in this chapter.

(c) Any breach of contract provisions or of (a) and (b) above by the sponsor agency may constitute grounds for contract cancellation upon reasonable notice of such by the Department.

Amended by R.1993 d.256, effective June 7, 1993.
See: 25 N.J.R. 876(a), 25 N.J.R. 2557(b).

8:82-5.2 Qualifications and requirements for provider agencies

(a) Provider agencies shall be accountable to the sponsor agency for the provision of respite services and shall enter into contracts with the designated sponsor agency.

(b) Provider agencies shall have demonstrated prior experience in delivering services to families with elderly and/or disabled members.

(c) Provider agencies shall agree to provide services at the rates set by the Department.

(d) An individual desiring to provide services under the Statewide Respite Care Program shall enter into a sub-contract with the sponsor agency as a provider and be subject to all requirements of provider agencies.

(e) All individuals providing respite care which includes homemaker/home health aide or personal care services shall be certified homemaker/home health aides.

(f) The sponsor agency and/or the Department shall reserve the right to cease purchasing services from any provider agency when any breach of the rules contained in this chapter occurs, constituting grounds for contract cancellation upon reasonable notice.

(g) All medical day care centers utilized for the Statewide Respite Care Program shall be licensed to provide medical day care in accordance with N.J.A.C. 8:43F-2.

(h) Private duty nurses utilized by the Statewide Respite Care Program shall be:

1. Nurses employed by agencies licensed by the New Jersey Division of Consumer Affairs, Department of Law and Public Safety, in accordance with the provisions of N.J.S.A. 56:8-1.1 and N.J.S.A. 34:8-43 et seq.;

2. Nurses employed by home health agencies licensed by the Department, in accordance with N.J.A.C. 8:42; or

3. Nurses employed by accredited agencies approved by the Department of Human Services, in accordance with N.J.A.C. 10:60-1.2.

Amended by R.1993 d.256, effective June 7, 1993.
See: 25 N.J.R. 876(a), 25 N.J.R. 2557(b).

SUBCHAPTER 6. FEES

8:82-6.1 Provider reimbursement and payment levels

(a) The Department shall determine reimbursement and payment levels for the respite services to be provided under the program.

(b) Reimbursement levels for services provided under the Statewide Respite Care Program shall be those levels used by the Division of Medical Assistance and Health Services for Medicaid reimbursements for homemaker, home health aide, and private duty nursing services, N.J.A.C. 10:60, nursing home, N.J.A.C. 10:63, hospital inpatient care, N.J.A.C. 10:52, and medical day care, N.J.A.C. 10:65-2.

1. In the event that a Medicaid participating nursing facility is not available a licensed nursing facility may be utilized at the lowest semi-private rate.

(c) Reimbursement for companion or sitter services shall be up to \$7.00 per hour for services rendered on weekdays and \$8.00 per hour for services rendered on weekends.

(d) Enrolled Medicaid providers for social adult day care shall be reimbursed at the Medicaid rate. Providers not enrolled with Medicaid shall be reimbursed up to \$30.00 for a full day session.

(e) Reimbursement for campership service shall be up to \$75.00 per day.

Amended by R.1993 d.256, effective June 7, 1993.
See: 25 N.J.R. 876(a), 25 N.J.R. 2557(b).

8:82-6.2 Service and cost limitations for eligible persons

(a) Each eligible person shall receive up to \$3,000 of respite services in a calendar year. Those service levels shall be adjusted based on funding available to the Department of Health and Senior Services.

(b) A sponsor may request an exception to an eligible person's service level. The request shall be made in writing to:

Department of Health and Senior Services
 PO Box 722
 Trenton, NJ 08625-0722

(c) Placement in a licensed nursing facility or in a licensed residential health care facility or a campership shall not exceed 21 days in a calendar year.

Amended by R.1993 d.256, effective June 7, 1993.
 See: 25 N.J.R. 876(a), 25 N.J.R. 2557(b).

8:82-6.3 Sliding fee scale for co-payments

(a) Co-payment fees shall apply to eligible persons rendered respite care services in accordance with the co-payment fee scale set forth in (b) below. In all cases the point at which cost-sharing shall be initiated will be based upon the most current Supplemental Security Income (SSI) guidelines in effect under section 1611(c)(1)(A) of the Social Security Act (as increased pursuant to section 1617 of such Act). The threshold beyond which an eligible person becomes ineligible for program services, is 300 percent of the SSI guidelines.

(b) The sliding fee scale shall be as follows:

Income as a percentage of the Monthly SSI level	Percent of Costs To Be Paid By Eligible Person
175%	5%
176%-207%	10%
208%-238%	15%
239%-269%	20%
270%-300%*	25%

* Institutional SSI level

(c) All co-payments shall be billed by the sponsor agency within six weeks following provision of the services contained in the service plan.

(d) When co-payment is not made within 90 days of billing, the sponsor agency shall suspend service until payment is made. The sponsor agency shall provide written notice of this action to the eligible person 10 days prior to the effective date of the proposed suspension of services.

(e) The sponsor agency shall not be held liable for the uncollected co-payment, as long as sponsor agency has expended reasonable efforts to collect any or all co-payments.

(f) Sponsor agencies may seek a reduction or waiver of co-payment through submission of a written request to the Department of Health and Senior Services, PO Box 722, Trenton, New Jersey 08625-0722. Requests for reduction or waiver of co-payment shall only be considered for the following reasons:

1. Death of the client;
2. Demonstrated financial hardship.

(g) No reduction or waiver of co-payment may be made without written Departmental approval.

Amended by R.1988 d.505, effective November 7, 1988.
 See: 20 N.J.R. 1051(a), 20 N.J.R. 2774(a).

Deleted (a)-(b) and substituted new (a)-(b); added new (e)-(f).
 Amended by R.1993 d.256, effective June 7, 1993.
 See: 25 N.J.R. 876(a), 25 N.J.R. 2557(b).

8:82-6.4 Procedures for program reporting

(a) Each sponsor agency shall submit monthly data to the Division of Senior Affairs, Statewide Respite Care Program, in a format specified by the Department containing the following information:

1. The number of eligible persons served by all provider agencies in the county;
2. The number of units of respite care provided per type of respite care to all eligible persons in the county;
3. Expenditures for program administration;
4. Financial data on the services provided; and
5. Other information necessary for successful management of the program.

Amended by R.1993 d.256, effective June 7, 1993.
 See: 25 N.J.R. 876(a), 25 N.J.R. 2557(b).

SUBCHAPTER 7. APPEALS

8:82-7.1 Appeals process

An applicant who is denied participation in the program because he or she does not qualify as an eligible person has the right to request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1.1 within 30 days of receipt of the written determination. There shall be no right to a hearing if an individual has been determined to be an "eligible person" but respite services cannot be provided under this chapter. Appeals shall be directed to:

Department of Health and Senior Services
 PO Box 722
 Trenton, New Jersey 08625-0722

Amended by R.1993 d.256, effective June 7, 1993.
 See: 25 N.J.R. 876(a), 25 N.J.R. 2557(b).