

CHAPTER 99**REHABILITATION FACILITIES
SET-ASIDE ACT RULES****Authority**

N.J.S.A. 30:6-23 et seq., specifically 30:6-32.

Source and Effective Date

R.2002 d.242, effective July 3, 2002.
See: 34 N.J.R. 1402(b), 34 N.J.R. 2840(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 99, Rehabilitation Facilities Set-Aside Act Rules, expires on December 30, 2007. See: 39 N.J.R. 3270(b).

Chapter Historical Note

Chapter 99, State Use Law for Rehabilitation Facilities, was adopted as R.1971 d.15A, effective January 28, 1971. See: 2 N.J.R. 100(b), 3 N.J.R. 41(a).

Chapter 99, State Use Law for Rehabilitation Facilities, was repealed by R.1980 d.178, effective April 22, 1980. See: 12 N.J.R. 322(a).

Chapter 99, State Use Law for Rehabilitation Facilities, was adopted as R.1985 d.55, effective February 19, 1985. See: 16 N.J.R. 2338(a), 17 N.J.R. 453(a).

Pursuant to Executive Order No. 66(1978), Chapter 99, State Use Law for Rehabilitation Facilities, expired on February 19, 1990.

Chapter 99, State Use Law for Rehabilitation Facilities, was adopted as R.1990 d.295, effective June 4, 1990. See: 22 N.J.R. 766(a), 22 N.J.R. 1724(b).

Pursuant to Executive Order No. 66(1978), Chapter 99, State Use Law for Rehabilitation Facilities, expired on June 4, 1995.

Chapter 99, Rehabilitation Facilities Set-Aside Act Rules, was adopted as R.1997 d.267, effective July 7, 1997. See: 29 N.J.R. 863(a), 29 N.J.R. 2832(a).

Chapter 99, Rehabilitation Facilities Set-Aside Act Rules, was readopted as R.2002 d.242, effective July 3, 2002. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS**10:99-1.1 Purpose**

The purpose of these rules is to further the policy of the State to encourage and assist people with severe disabilities to achieve maximum personal independence through productive employment by assuring a continuous market for commodities and services provided by them, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on public assistance and the need for costly institutionalization.

Amended by R.2002 d.242, effective August 5, 2002.

See: 34 N.J.R. 1402(b), 34 N.J.R. 2840(b).

Substituted "people with severe disabilities" for "severely disabled individuals" and deleted "manufactured" following "commodities".

10:99-1.2 Scope

This chapter establishes a mechanism through which people with severe disabilities throughout the State of New Jersey are encouraged and enabled to become productively employed through participation in community rehabilitation programs. The rules ensure market continuity by placing commodity items and services on set-aside contracts for purchase by State agencies, municipalities, school districts, counties, quasi-State agencies, county and State colleges, volunteer fire departments, volunteer first aid and rescue squads, and independent institutions of higher learning.

Amended by R.2002 d.242, effective August 5, 2002.

See: 34 N.J.R. 1402(b), 34 N.J.R. 2840(b).

Rewrote the section.

10:99-1.3 Definitions

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

“Blind or legally blind” means central visual acuity that does not exceed 20/200 in the better eye with best correction or field of vision that are so limited that the widest diameter of visual field subtends an angle no greater than 20 degrees.

“Central Nonprofit Agency (CNA)” means an organization incorporated under the laws of New Jersey, operated in the interest of the blind and visually impaired or other persons with severe disabilities and designated by the Commissioner to facilitate the distribution (by direct allocation, or other means) of orders of the State and local government for commodities and services on the procurement list among qualified CRPs serving the blind and visually impaired or other persons with severe disabilities.

“Commissioner” means the Commissioner of the Department of Human Services.

“Commodities and Services Council (CSC)” means the Commodities and Services Council for the Blind, Visually Impaired and other persons with severe disabilities as constituted in P.L. 1981, c.488, § 3.

“Community rehabilitation program (CRP)” means a rehabilitation program located in this State which qualifies as a charitable organization or institution under the provisions of section 501(c)(3) of the Internal Revenue Code and is conducted on a nonprofit basis for the purpose of carrying out a recognized program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency, illness or injury and of providing these individuals with remunerative employment or other occupational rehabilitative activity of an educational or therapeutic nature as defined in section 525.1 et seq. of the regulations adopted pursuant to the Federal Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq. and related codes, and which is engaged in the production of commodities or the provision of services in connection with which not less than 75 percent of the total amount of direct labor is performed in the preparation of the commodity for sale or in the execution of the services rendered by blind or other persons with severe disabilities excluding any hours of supervision, administration, inspection or shipping.

“Fiscal year” means the 12 month period beginning on July 1 of each year.

“Other persons with severe disabilities” means persons other than those who are blind and visually impaired who are so severely incapacitated by any physical or mental disability that they cannot engage in normal competitive employment, without support, because of such disability. Some specific categories of persons with severe disabilities, as defined above, include, but are not limited to, those disabled by the following conditions:

1. Spinal cord injury;
2. Hearing impaired;
3. Muscular dystrophy;
4. Multiple sclerosis;
5. Developmental disabilities or other neurological disorders;
6. Severe orthopedic handicaps;
7. Multiple disabilities;
8. Severe personality or behavioral disorders, including psychosis and neurosis;
9. Severe pulmonary disease; and
10. Severe cardiac disorders.

“Program” means the CNA, regulated by the New Jersey CSC in accordance with this chapter.

“Purchasing agency” means any State agency or municipality, school district, county, quasi-State agency, county and State college, volunteer fire department, volunteer first aid and rescue squad, public authority, commission, and independent institutions of higher learning as cited in the Cooperative Purchase Program statute (N.J.S.A. 52:25-16.1 and 40A:11-12) that places orders for the procurement of any commodity or service on the procurement list.

Amended by R.2002 d.242, effective August 5, 2002.

See: 34 N.J.R. 1402(b), 34 N.J.R. 2840(b).

Rewrote “Central Nonprofit Agency (CNA)”, “Commodities and Services Council”, “Other severely disabled persons”, “Program” and “Purchasing agency”; added “Community rehabilitation program (CRP)”; and deleted “Rehabilitation facility”.

SUBCHAPTER 2. COMMODITIES AND SERVICES COUNCIL (CSC) FOR THE BLIND AND OTHER PERSONS WITH SEVERE DISABILITIES

10:99-2.1 Membership

(a) The CSC shall consist of the Director of the Division of Vocational Rehabilitation Services; the Director of the Division of Purchase and Property; the Chief of the Bureau of State Use Industries; the Director of the Division of Development for Small Business and Women and Minority Businesses; the Director of the Division of Developmental Disabilities; the Director of the Division of Disability Services; the Executive Director of the Commission for the Blind and Visually Impaired; the Chairperson of ACCSES-NJ/CNA SERVICES; or their designees; and three citizens at-large members, at least one of whom shall be a blind person in accordance with the definition provided in N.J.A.C. 10:99-1.3 and at least one of whom shall represent the private business sector. The at-large members shall be appointed by the Governor, with the advice and consent of the Senate, for terms of three years, except that, of the first at-large members appointed, one shall be appointed for a term of three years, one for a term of two years, and one for a term of one year.

(b) The members of the CSC shall organize annually by the selection of one of their members to serve as the chairperson. The at-large members shall serve without compensation but shall be reimbursed by the Department of Human Services for necessary expenses incurred in the performance of their duties.

Amended by R.2002 d.242, effective August 5, 2002.
See: 34 N.J.R. 1402(b), 34 N.J.R. 2840(b).

Substituted "CSC" for "Council" throughout; in (a), substituted "Chairperson" for "President" following "Visually impaired; the", "ACCSES-NJ/CNA SERVICES;" for "the New Jersey Association of Rehabilitation Facilities" preceding "or their designees" and inserted "in accordance with the definition provided in N.J.A.C. 10:99-1.3" following "blind person".

10:99-2.2 Duties of the CSC

(a) The CSC shall recommend to the Commissioner an organization for designation as the CNA for the purposes of this program.

(b) The CSC shall develop, through the CNA, a list of commodities and services which shall be set aside for purchase by State agencies from CNA-approved CRPs and shall establish a contract selling price based on fair market price (FMP) (N.J.A.C. 10:99-2.4 and 5.4) for those commodities and services.

(c) The CSC shall establish allowable fees including the administrative/management fee for the CNA which shall be added to the FMP (N.J.A.C. 10:99-3.5).

(d) The CSC shall address grievances which may arise between the CNA and a CRP as the result of the relationship defined by the Memorandum of Understanding (N.J.A.C. 10:99-5.10).

(e) The CSC shall monitor the activities of the CNA in accordance with the standards contained in this chapter, both in terms of its relations with participating CRPs and with customer agencies. In cases of documented non-compliance on part of the CNA, the CSC shall recommend appropriate corrective action or rescinding of the CNA in accordance with N.J.A.C. 10:99-4.5, 4.6 and 5.7.

(f) The CSC may, by majority action, release the Bureau of State Use Industries from a waiver issued by the Bureau of State Use Industries in accordance with N.J.A.C. 10:99-3.2.

Amended by R.2002 d.242, effective August 5, 2002.
See: 34 N.J.R. 1402(b), 34 N.J.R. 2840(b).
Rewrote the section.

10:99-2.3 Sales catalog

(a) The CNA shall issue or make available to each government purchasing agency a sales catalog or listing, which shall include CSC approved commodities and services which shall be procured from the CNA as follows:

1. For commodities, the sales catalog shall include the item description, general specifications, identification, price, shipping, ordering, and other pertinent information; and

2. For services, the sales catalog shall identify the type of service to be provided and other relevant information.

Amended by R.2002 d.242, effective August 5, 2002.
See: 34 N.J.R. 1402(b), 34 N.J.R. 2840(b).

In (a), inserted "or make available" following "issue", "government" following "each", "or listing" following "catalog", "CSC approved" preceding "commodities" in the introductory paragraph and "general" following "description," and "shipping, ordering," following "price" in 1.

10:99-2.4 Contract selling price

(a) The contract sales price of a commodity item or service approved by CSC shall equal fair market price (FMP) plus the administrative/management fee payable to CNA and any approved payment to the CRP in excess of the FMP.

(b) Fair market price (FMP) shall be developed and determined in accordance with the following procedures:

1. CNA shall solicit proposals from CRPs to place commodity items or services on the State set-aside contract. CNA shall review proposals received for feasibility and the CRPs capability to perform.

2. In the event CNA approves a CRPs proposal, CNA shall solicit the Division of Purchase and Property's (Division) approval of the proposal. Such CNA solicitation shall include the following: documentation establishing that no State contract exists with respect to the commodity item or service; documentation evidencing the need by State agencies for the commodity item or service; examples of such documentation may include prior contract usage or a request from the using agency; CNA certification of the ability of the CRP to successfully provide the commodity item or service; and documentation justifying the FMP proposed for the commodity or service. Within two to three weeks of the CNA solicitation, the Division will present its request for any additional, relevant, information necessary for timely review of the solicitation.

3. FMP means a recent competitive bid or negotiated price at which a vendor of the same or similar commodity item or service, who is regularly engaged in the business of selling such commodity item or service, offers to sell such commodity items or service under similar terms in the same market. Included in FMP are the CRPs costs of production (overhead, labor and materials) and distribution. The FMP shall be the basis for establishing a CRP approved price.

4. In its review of the CRP approved price proposed for a commodity item or service, the Division may consider, if applicable, pricing for the same or similar commodity or service received in the most recent competitive solicitation for the same or similar commodity item or

service, offered under similar conditions. The Division may also research, for comparison purposes, private sector pricing for the same or similar commodity item or service, offered under similar conditions. The Division's FMP analysis shall consider product specifications, quality requirements, current market condition, lead-time, production volumes and anticipated order quantities. The Division shall conduct all studies and analysis within two to three weeks of final document submission by CNA and notify CNA of its decision.

5. Upon the Division's response to CNA's request, CNA shall submit the proposal to CSC for consideration. Such submission shall include evidence of the Division's position with respect to the proposal.

(c) The proposal submitted by CNA to CSC for consideration may include a proposed payment to the CRP in excess of FMP, as determined by the CNA, for the CRP to provide the commodity item or service. In no event shall a proposed payment to the CRP in excess of FMP exceed seven percent of FMP.

(d) In considering a proposal to place a commodity item or service on State set-aside contract, CSC shall consider:

1. The CNA's recommendation;
2. The Division's position;
3. The FMP;
4. The CNA administrative/management fee; and
5. Any proposed payment to the CRP in excess of FMP.

Amended by R.2002 d.242, effective August 5, 2002.
See: 34 N.J.R. 1402(b), 34 N.J.R. 2840(b).
Rewrote the section.

10:99-2.5 Annual report

The CSC shall prepare and submit to the Commissioner an annual report prepared by the CNA on the activities conducted under N.J.S.A. 30:6-23 et seq. (hereinafter referred to as "the Act") including significant accomplishments and developments and such other details as the CNA considers appropriate or the CSC may request within 90 days following the close of the CNA's fiscal year.

Amended by R.2002 d.242, effective August 5, 2002.
See: 34 N.J.R. 1402(b), 34 N.J.R. 2840(b).
Rewrote the section.

SUBCHAPTER 3. CENTRAL NONPROFIT AGENCY (CNA)

10:99-3.1 Designation of the CNA

A CNA shall be designated by the Commissioner to represent the CRPs for the blind and visually impaired as well as CRPs for other people with severe disabilities.

Amended by R.2002 d.242, effective August 5, 2002.
See: 34 N.J.R. 1402(b), 34 N.J.R. 2840(b).

Substituted "CRPs" for "rehabilitation facilities" and "people with severe disabilities" for "severely disabled individuals".

10:99-3.2 Duties and responsibilities of the CNA

(a) The CNA shall:

1. Act as a liaison in the representation of CRPs to the CSC and other State, municipal, county agencies, public authorities, commissions, and offices affected by the Act;

2. Evaluate the qualifications and capabilities of the CRPs in accordance with the requirements of this chapter and provide the CSC with the data concerning these CRPs, their status as a qualified program, and their manufacturing and service capabilities;

3. Recommend to the CSC, with justification, including recommended prices, commodities or services for procurement from its qualified CRPs, as specified in N.J.A.C. 10:99-3.3;

4. Meet with the Chief of the Bureau of State Use Industries to secure a formal written waiver, including any restrictions thereof, for a commodity or services proposed for set-asides, to insure there will be no duplication or competition;

5. Distribute orders from State and other purchasing agencies among its qualified CRPs, in accordance with N.J.A.C. 10:99-3.4;

6. Maintain the following records and data on its certified CRPs:

- i. The articles of incorporation;
- ii. A copy of the by-laws;
- iii. A copy of the Section 501(c)(3) Internal Revenue Service certificate;
- iv. Evidence that the facility meets the criteria for nonprofit status under the applicable provisions of New Jersey law and is registered and in good standing as a charitable organization with the Secretary of State; and
- v. A copy of current certificate(s) issued by the United States Department of Labor authorizing wage payments under section 14(c) of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

7. Monitor participating CRPs to insure contract compliance in production of a commodity or performance of a service;

8. Monitor and inspect the activities of participating CRPs to ensure compliance with N.J.S.A. 30:6-23 et seq. and this chapter;