

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. 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. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in 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. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Rehabilitative Services for Children

Proposed Amendments: N.J.A.C. 10:77-4.2, 4.9, 4.10, 4.14, 5.2, 5.9, and 5.14

Proposed New Rules: N.J.A.C. 10:77-4.15 and 5.15

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

Authority: N.J.S.A. 30:4D-1 et seq., and 30:4J-8 et seq.

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

Agency Control Number: 23-P-01.

Proposal Number: PRN 2023-092.

Submit comments by November 17, 2023, to:

Margaret M. Rose
Attn: 10:77 Amendments
Division of Medical Assistance and Health Services
PO Box 712
Mail Code #26
Trenton, NJ 08625-0712
Fax: (609) 588-7343
Email: Margaret.Rose@dhs.nj.gov
Delivery: 6 Quakerbridge Plaza
Mercerville, NJ 08619

The agency proposal follows:

Summary

The Department of Human Services (“Department” or “DHS”) is proposing amendments and new rules at N.J.A.C. 10:77, Rehabilitative Services for Children, related to fingerprint-based criminal history background checks for specified providers. Criminal background checks are currently required pursuant to N.J.A.C. 10:77 for providers of behavioral assistance services and intensive in-community mental health rehabilitation services for agency heads and all employees of those agencies who come into direct contact with children.

The proposed amendments and new rules expand the requirements related to the background checks to explain, in more detail, the requirements of the background checks and how they shall be completed. The fingerprint-based criminal history background checks will be performed by the Employment Controls and Compliance Unit (ECCU) of the DHS Office of Program Integrity and Accountability (OPIA). Providers were notified of these requirements through the Division of

Medical Assistance and Health Services (DMAHS) Newsletter Volume 32, Number 24, in September 2022. The proposed amendments and new rules update the rule to memorialize this change.

Federal regulations, at 42 CFR 455.400 through 455.470, define screening and enrollment requirements for providers enrolling in a state Medicaid program. This includes the requirements related to criminal background checks, and this rulemaking complies with that provision.

At N.J.A.C. 10:77-4.2, a proposed amendment adds the definition for the term “fingerprint-based criminal history record background check” as it is used in this subchapter. Existing references at N.J.A.C. 10:77-4.9(g), 4.10(a)12, and 4.14(d)2 to “criminal background checks” are being changed to “fingerprint-based criminal history background checks,” to be consistent with the definition.

At N.J.A.C. 10:77-4.9(d), a proposed amendment changes “group practices” to “group practice” for grammatical correctness.

Proposed new N.J.A.C. 10:77-4.9(f)1 requires all agencies to provide an attestation of a valid driver’s license for any employee whose job duties may include the transportation of children, youth, or young adults to the Children’s System of Care (CSOC) within the Department of Children and Families (DCF). Proposed new N.J.A.C. 10:77-4.9(f)2 requires that an attestation of a current driver’s license be submitted to the CSOC as part of a new application or a change of staff request. Proposed new N.J.A.C. 10:77-4.9(f)2i requires the agency to have a policy requiring all staff to submit a new copy of their driver’s license immediately upon renewal of an expired license. Proposed new N.J.A.C. 10:77-4.9(f)3 requires all agencies to attest, annually, that those staff members whose job duties may include transportation have a valid driver’s license in their possession and that the license was physically reviewed and noted to have a future expiration date. Staff with license expiration dates within two months of the license examination date shall present a copy of the renewed license upon renewal. This attestation must be submitted using the verification form located on the DCF website and submitted to the CSOC Office of Community Services at the email address provided.

At N.J.A.C. 10:77-4.9(g), a proposed amendment requires that the fingerprint-based criminal history background check must be completed through the OPIA. A cross-reference to proposed N.J.A.C. 10:77-4.15 is provided to direct the reader to the complete requirements related to fingerprint-based criminal history background checks.

At N.J.A.C. 10:77-4.10(a)12, a proposed amendment requires that the provider ensures that employee fingerprint-based criminal history background checks are completed in accordance with proposed new N.J.A.C. 10:77-4.15.

At N.J.A.C. 10:77-4.14(d)2, a proposed amendment requires that the fingerprint-based criminal history background checks will be conducted by the DHS Office of Program Integrity and Accountability and not any other “recognized and reputable search organization.”

New N.J.A.C. 10:77-4.15, Fingerprint-based criminal history background checks, is being proposed to detail the requirements of the

fingerprint-based criminal history background checks required at N.J.A.C. 10:77-4.9(g).

Proposed new N.J.A.C. 10:77-4.15(a) requires that no agency under contract with the Department shall employ or contract with any individual unless that person has no disqualifying criminal history on file with the State Bureau of Identification in the Division of the State Police.

Proposed new N.J.A.C. 10:77-4.15(a)1 requires that the fingerprint-based criminal history background check be done for all agency heads and employees who may provide in-person services directly to beneficiaries, and states that the DHS will inform the agency if an individual has been determined qualified or disqualified as a result of the fingerprint-based criminal history background check and that the agency shall notify the individual. Regarding those deemed as qualified, the agency is not compelled to employ the individual; however, if an individual is deemed disqualified, that individual shall not be offered employment or, if already employed by the agency, shall be terminated.

Proposed new N.J.A.C. 10:77-4.15(a)2 requires that all current agency heads and staff that have not completed a fingerprint-based criminal history background check, as well as all new agency heads and appropriate staff, complete this process through the ECCU within the OPIA.

Proposed new N.J.A.C. 10:77-4.15(a)3 requires all persons who have a current background check on file to complete a fingerprint-based criminal history background check through the ECCU within two years of the effective date of this rulemaking.

Proposed new N.J.A.C. 10:77-4.15(a)4 states the fingerprints of all staff will be “flagged” by the State Police and any arrests subsequent to the initial fingerprint-based criminal history background check shall be reported to the ECCU and the CSOC. If that information results in an individual being determined ineligible for employment, the provider agency shall also be notified and the individual must immediately stop working.

Proposed new N.J.A.C. 10:77-4.15(a)5 requires that once an employee is fingerprinted, if they are not hired, or if their employment is terminated, the provider must take steps to remove the “flag” from their fingerprint record.

Proposed new N.J.A.C. 10:77-4.15(b) lists the specific crimes and offenses that, if revealed during the fingerprint-based criminal history background check, would result in the individual being disqualified from employment.

Proposed new N.J.A.C. 10:77-4.15(c) allows an individual 14 days from the notice of disqualification to challenge the accuracy of the fingerprint-based criminal history background check.

Proposed new N.J.A.C. 10:77-4.15(d) states that if a potential agency head or employee refuses to consent to, and cooperate with, a fingerprint-based criminal history background check they cannot be considered for employment.

Proposed new N.J.A.C. 10:77-4.15(e) states that if a currently employed agency head or employee who is required pursuant to this section to undergo a fingerprint-based criminal history background check refuses to consent to cooperate with a fingerprint-based criminal history background check that they shall be immediately removed from their position and their employment terminated.

Proposed new N.J.A.C. 10:77-4.15(f) states that any individual convicted of a crime or disorderly persons offense against children, as set forth at N.J.S.A. 2C:24-4, will result in the individual being permanently disqualified for employment by the agency.

Proposed new N.J.A.C. 10:77-4.15(g) states that if an individual who has been convicted of crimes or offenses that would have disqualified them for employment, but who can affirmatively demonstrate to the Department that they have been rehabilitated, may be considered for employment. Proposed new N.J.A.C. 10:77-4.15(g)1 through 8 list the factors to be considered by the Department as evidence of an individual’s rehabilitation.

Proposed new N.J.A.C. 10:77-4.15(h) allows an individual up to 14 days from the date of the written notice of disqualification to provide evidence of rehabilitation to the Department. The individual may also make a one-time request for an additional 14 days to provide evidence of rehabilitation.

Proposed new N.J.A.C. 10:77-4.15(i) allows the Department up to 90 days from the receipt of the evidence of rehabilitation submitted by the individual to make a determination about the individual’s qualification status. The individual shall be notified, in writing, of the Department’s decision.

At N.J.A.C. 10:77-5.2, a proposed amendment adds the definition for the term “fingerprint-based criminal history background check” as it is used in this subchapter. Existing references at N.J.A.C. 10:77-5.9(e) and 5.14(d)2 to “criminal background checks” are being changed to “fingerprint-based criminal history background checks” to be consistent with the definition.

At N.J.A.C. 10:77-5.9(e), a proposed amendment requires that the fingerprint-based criminal history background check must be completed through the OPIA. A cross-reference to proposed new N.J.A.C. 10:77-5.15 is provided to direct the reader to the complete requirements related to fingerprint-based criminal history background checks.

Proposed new N.J.A.C. 10:77-5.9(f)1 requires that all agencies provide an attestation of a valid driver’s license for any employee whose job duties may include the transportation of children, youth, or young adults to the CSOC within the DCF. Proposed new N.J.A.C. 10:77-5.9(f)2 requires that an attestation of a current driver’s license be submitted to the CSOC as part of a new application or a change of staff request. Proposed new N.J.A.C. 10:77-5.9(f)2i requires the agency to have a policy requiring all staff to submit a new copy of their driver’s license immediately upon renewal of an expired license. Proposed new N.J.A.C. 10:77-5.9(f)3 requires all agencies to attest annually that staff whose job duties may include transportation have a valid driver’s license in their possession and that the license was physically reviewed and noted to have a future expiration date. Staff with license expiration dates within two months of the license examination date shall present a copy of the renewed license upon renewal. This attestation must be submitted using the verification form located on the DCF website and submitted to the CSOC Office of Community Services at the email address provided.

At N.J.A.C. 10:77-5.14(d)2, a proposed amendment requires that the fingerprint-based criminal history background checks will be conducted by the DHS Office of Program Integrity and Accountability and not any other “recognized and reputable search organization.”

New N.J.A.C. 10:77-5.15, Criminal history background checks, is being proposed to detail the requirements of the fingerprint-based criminal history background checks required pursuant to N.J.A.C. 10:77-5.9(e).

Proposed new N.J.A.C. 10:77-5.15(a) requires that no agency under contract with the Department shall employ or contract with any individual unless that person has no disqualifying criminal history on file with the State Bureau of Identification in the Division of the State Police.

Proposed new N.J.A.C. 10:77-5.15(a)1 requires that the fingerprint-based criminal history background checks be done for all agency heads and employees who may provide in-person services directly to beneficiaries, and states that DHS will inform the agency if an individual has been determined qualified or disqualified as a result of the fingerprint-based criminal history background check, and that the agency shall inform the individual. Regarding those deemed as qualified, the agency is not compelled to employ the individual; however, if an individual is deemed disqualified, that individual shall not be offered employment, or if already employed by the agency, shall be terminated.

Proposed new N.J.A.C. 10:77-5.15(a)2 requires that all current agency heads and staff that have not completed a fingerprint-based criminal history background check and all new agency heads and staff who may provide in-person services directly to beneficiaries must complete that process through the ECCU within the OPIA.

Proposed new N.J.A.C. 10:77-5.15(a)3 requires that all persons who have a current background check on file to complete a fingerprint-based criminal history background check through the ECCU within two years of the effective date of this rulemaking.

Proposed new N.J.A.C. 10:77-5.15(a)4 states that the fingerprints of all staff will be “flagged” by the State Police and any arrests subsequent to the initial background check shall be reported to the ECCU, and the CSOC shall be notified. If that information results in an individual being determined ineligible for employment, the provider shall be notified and the individual must immediately stop working.

Proposed new N.J.A.C. 10:77-5.15(a)5 requires that once an employee is fingerprinted if they are not hired or if their employment is terminated, the provider must take steps to remove the “flag” from their fingerprint record.

Proposed new N.J.A.C. 10:77-5.15(b) lists the specific crimes and offenses that, if revealed during the fingerprint-based criminal history background check, would result in the individual being disqualified from employment.

Proposed new N.J.A.C. 10:77-5.15(c) allows an individual 14 days from the notice of disqualification to challenge the accuracy of the fingerprint-based criminal history background check.

Proposed new N.J.A.C. 10:77-5.15(d) states that if a prospective agency head or employee refuses to consent to and cooperate with a fingerprint-based criminal history background check, they cannot not be considered for employment.

Proposed new N.J.A.C. 10:77-5.15(e) states that if a currently employed agency head or employee who is required pursuant to this section to undergo a fingerprint-based criminal history background check refuses to consent to and cooperate with a fingerprint-based criminal history background check, that person shall be immediately removed from their position and their employment terminated.

Proposed new N.J.A.C. 10:77-5.15(f) states that any individual convicted of a crime or disorderly persons offense against children, as set forth at N.J.S.A. 2C:24-4, shall result in that individual being permanently disqualified for employment by the agency.

Proposed new N.J.A.C. 10:77-5.15(g) states that if an individual who has been convicted of crimes or offenses that would have disqualified them for employment, but who can affirmatively demonstrate to the Department that they have been rehabilitated, may be considered for employment. Proposed new N.J.A.C. 10:77-5.15(g)1 through 8 list the factors to be considered by the Department as evidence of an individual’s rehabilitation.

Proposed new N.J.A.C. 10:77-5.15(h) allows an individual up to 14 days from the date of the written notice of disqualification to provide evidence of rehabilitation to the Department. The individual may make a one-time request for an additional 14 days to provide evidence of rehabilitation.

Proposed new N.J.A.C. 10:77-5.15(i) allows the Department up to 90 days from the receipt of the evidence submitted by the individual to make a determination about the individual’s qualification status. The individual shall be notified, in writing, of the Department’s decision.

Throughout the chapter, amendments are proposed for style, clarity, use, and grammar.

The Department has determined that the comment period for this notice of proposal will be 60 days; therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this notice is excepted from the rulemaking calendar requirement.

Social Impact

During State Fiscal Year 2022, approximately 71,979 beneficiaries received services covered pursuant to this chapter. This includes Medicaid/NJ FamilyCare beneficiaries, as well as those children receiving mental health rehabilitation services under the auspices of the Department of Children and Families’ Children’s System of Care.

These proposed amendments and new rules regarding the fingerprint-based criminal history background checks required to be performed on providers will help ensure the safety of the children receiving mental health rehabilitation services.

Economic Impact

During State Fiscal Year 2022, approximately 71,979 beneficiaries received services covered pursuant to this chapter at a cost of \$399,009,839 (State and Federal share combined). These figures include costs for providing services to Medicaid/NJ FamilyCare eligible beneficiaries, as well as those children who are not eligible for Medicaid/NJ FamilyCare, but who receive mental health rehabilitation services under the auspices of the Children’s System of Care within the Department of Children and Families.

There is no negative economic impact on the beneficiaries who receive these services because they are not required to pay for the services other than any premiums or co-payments previously established for specific NJ FamilyCare plans and this proposed rulemaking does not change that.

There will be a positive economic impact on the provider agencies as they will no longer need to fund the background checks. There is no cost for the background check for the individual on whom the background check is completed or for the provider agency requesting the background check. The cost of background checks can vary widely based the complexity; a background check that meets the requirements proposed in this rulemaking cost approximately \$65.00 per person. The exact benefit to the provider agencies cannot be determined, as it is dependent upon the staffing levels of the specific agencies.

Federal Standards Statement

Sections 1902(a)(10) and 1905(a)(13) of the Social Security Act (the Act), 42 U.S.C. §§ 1396a(a)(10) and 1396d(a)(13), respectively, allow a state Medicaid program to offer other diagnostic, screening, prevention, and rehabilitation services, including any services recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under state law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible level of functioning.

Title XXI of the Social Security Act contains broad guidelines to allow a state to provide coverage of a variety of health services under a state-operated children’s health insurance program (known in New Jersey as NJ FamilyCare) for targeted, low-income children and expects the state to adopt regulations in order to ensure the quality of services. Section 2101 of the Act (42 U.S.C. § 1397aa) provides funds to a state to administer the program in an effective and efficient manner. Sections 2103 and 2110 of the Social Security Act (42 U.S.C. §§ 1397cc and 1397jj, respectively) define the scope of coverage to be provided and provides definitions of allowable services, including rehabilitative and mental health services.

The Federal regulations at 42 CFR 440.130 define rehabilitative services as any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his or her practice under state law, for maximum reduction of physical or mental disability and restoration of a patient to his or her best possible functional level.

The Federal regulations at 42 CFR 455.400 through 455.470 define screening and enrollment requirements for providers enrolling in a state Medicaid program. This includes the requirements related to criminal background checks.

The Department has reviewed the Federal statutory and regulatory requirements and has determined the proposed amendments and new rules do not exceed Federal standards. Therefore, a Federal standards analysis is not required.

Jobs Impact

The Department does not anticipate that the proposed amendments and new rules will result in the creation or loss of jobs in the State of New Jersey.

Agriculture Industry Impact

As the proposed amendments and new rules concern background checks for the administrators and employees of agencies providing specified mental health rehabilitation services to children, the Department anticipates that the proposed rulemaking will have no impact on the agriculture industry in the State of New Jersey.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., defines a “small business” as any business resident in this State that employs fewer than 100 employees full-time, is independently owned and operated, and is not dominant in its field. There are approximately 417 provider agencies providing behavioral assistance and/or intensive in-community services throughout the State. Many of the agencies providing behavioral assistance and/or intensive in-community services are considered small businesses pursuant to this definition; therefore, a regulatory flexibility analysis is required.

The proposed amendments and new rules impose reporting, recordkeeping, and compliance requirements by requiring that proof of successful completion of required fingerprint-based criminal history background checks of agency heads and staff be maintained by the agency and that these background checks be completed through the Department of Human Services. The Department believes that these requirements

ensure that services are provided in a manner that is responsible to the community and the beneficiaries they serve. These background checks must be uniformly applied to large or small businesses to provide a consistent quality of service to the beneficiaries. There is no initial capital cost of annual compliance cost for the provider agencies because the background checks will be provided by the Department of Human Services at no cost to the provider agencies.

The Department has attempted to minimize any adverse economic impact on small businesses by requiring only that amount of recordkeeping, compliance, and reporting requirements necessary to ensure the safety of the beneficiaries and to protect the Medicaid/NJ FamilyCare programs from fraud. Providers are already required to maintain records regarding staff members including, but not limited to: applicable education, certification, licensure, and completion of background checks.

The proposed amendments and new rules do not require the provider agencies to pay for any professional services beyond necessary means to maintain staff records, as described above. This is a routine part of operating such an agency and it is anticipated that current staff would be sufficient to meet these needs.

The requirements in the proposed amendments and new rules must be equally applicable to all providers, regardless of business size, because a uniform quality of care must be provided to all beneficiaries, and because the Department must ensure that all services conform to New Jersey statutes and to applicable Federal laws and regulations.

Housing Affordability Impact Analysis

As the proposed amendments and new rules concern fingerprint-based criminal history background checks for the administrators and specified employees of agencies providing mental health rehabilitation services to children, the Department anticipates that the proposed rulemaking will have no impact on the affordability of housing, nor will it have any impact on average costs associated with housing.

Smart Growth Development Impact Analysis

As the proposed amendments and new rules concern fingerprint-based criminal history background checks for the administrators and specified employees of agencies providing mental health rehabilitation services to children, the proposed amendments and new rules will have no impact on housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan and will have no impact on smart growth.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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

SUBCHAPTER 4. BEHAVIORAL ASSISTANCE SERVICES

10:77-4.2 Definitions

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

...
“Fingerprint-based criminal history record background check” means a determination of whether a person has a criminal record by cross-referencing that person’s name and fingerprints with those on file with the State Bureau of Identification in the New Jersey Division of State Police.

10:77-4.9 Staffing requirements

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

(d) The agency, group practice[s], or other service provider entity must ensure that the evaluation of identified behavior(s) that includes recommendations for specific interventions with definable outcomes and strategies is provided in accordance with the requirements at N.J.A.C. 10:77-4.7.

(e) (No change.)

(f) All employees shall have a valid driver’s license if his or her job functions include the operation of a vehicle used in the transportation of the children/youth or young adults. Transportation is not a covered behavioral assistance service.

1. Agencies shall provide the Children’s System of Care (CSOC), within the Department of Children and Families (DCF), with an attestation of valid driver’s licenses for all employees whose job responsibilities may require them to transport children/youth or young adults.

2. An agency shall complete an attestation of a valid driver’s license for every employee whose job responsibilities may require them to transport children/youth or young adults and shall submit the attestation to the CSOC as part of a new provider application or change of staff request before the employee can provide services to children/youth or young adults.

i. The agency shall have a policy requiring all employees whose job responsibilities may require them to transport children/youth or young adults to provide proof of renewal of an expired license immediately upon renewal.

3. Agencies shall attest annually that those staff required to have a valid driver’s license pursuant to this subsection have a valid driver’s license in their possession and that the license was physically reviewed and noted to have a future expiration date. Staff with license expiration dates within two months of the license examination date should present a copy of the renewed license upon renewal. Agencies shall provide the attestation by January 31 of each year using the required verification available on the DCF website. Completed forms shall be submitted electronically to the CSOC Office of Community Services, at IICprovider.Communications@dcf.nj.gov.

(g) All employees [having] **who may have** direct contact with and/or [rendering] **render** behavioral assistance services directly to the beneficiaries shall be required to successfully complete **fingerprint-based criminal history** background checks **through the Department of Human Services’ Office of Program Integrity and Accountability (OPIA), pursuant to N.J.A.C. 10:77-4.15.**

(h) (No change.)

10:77-4.10 Staff responsibilities

(a) The provider shall be responsible for supervising the overall daily management of all facets of the program, including, but not limited to, [assuring] **ensuring**:

1.-11. (No change.)

12. That **fingerprint-based criminal history** background checks are successfully completed **in accordance with N.J.A.C. 10:77-4.15** on any employee who [will have direct contact with children] **may provide in-person services directly to beneficiaries.**

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

10:77-4.14 General provider recordkeeping requirements

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

(d) In addition to the specific records required to be maintained for specific staff, the following information shall also be maintained for all individuals providing or supervising the provision of behavioral assistance services:

1. (No change.)

2. Verified written documentation of successful completion of a **fingerprint-based criminal history** background check conducted by [a recognized and reputable search organization] **the DHS Office of Program Integrity and Accountability (OPIA) in accordance with N.J.A.C. 10:77-4.15** for all staff [having direct contact with children] **who may provide in-person services directly to beneficiaries.**

10:77-4.15 Fingerprint-based criminal history background checks

(a) Any community agency under contract with the Department of Human Services shall not pay, or contract with, any employee or agency head for the provision of services unless it has first been determined that no criminal history record information exists on file in the State Bureau of Identification in the New Jersey Division of State Police, that would disqualify the community agency head or the community agency employees from such employment. The

determination shall be made by the DHS Office of Program Integrity and Accountability (OPIA).

1. Each community agency head and all community agency employees who may provide in-person services directly to beneficiaries shall be required to cooperate with a fingerprint-based criminal history background check provided by DHS/OPIA. The agency shall submit the names of the individuals requiring fingerprint-based criminal history background checks to DHS/OPIA. The Department shall notify the community agency if an individual has been determined qualified or disqualified and the community agency shall notify the individual. The Department's determination of qualification shall not require the community agency to employ the individual. The Department's determination of disqualification shall require the community agency or community care residence to terminate employment or not offer employment to the individual.

2. All new and current agency heads and staff who are required pursuant to this section to undergo a fingerprint-based criminal history background check that have not completed one, must complete the fingerprint-based criminal history background check process through the Employment Controls and Compliance Unit (ECCU) within the DHS Office of Program Integrity and Accountability (OPIA).

3. All current agency heads and staff that have had a previous background check must complete the fingerprint-based criminal history background check process through the ECCU, DHS Office of Program Integrity and Accountability (OPIA) by (two years after the effective date of this section).

4. For all staff background checked by ECCU, the State Police "flag" each fingerprint and notify ECCU when it is associated with a criminal activity subsequent to the initial fingerprint-based criminal history background check. If an employee is identified as having been associated with an arrest, ECCU will reach out to DMAHS for a final determination and the Children's System of Care (CSOC) within the Department of Children and Families (DCF) will be notified of the determination. For those staff who are determined ineligible for employment, CSOC will notify the employer. Those staff members shall stop working immediately upon determination of ineligibility.

5. Once an individual is fingerprinted, if they are not hired, or the employee's employment terminates for any reason, the provider shall submit a flag removal form to ECCU. The provider may contact the help desk through email at ECCU.FARA@dhs.nj.gov or call 609-262-0207 for assistance, if needed.

(b) An individual shall be disqualified from employment if that individual's fingerprint-based criminal history background check reveals a record of conviction of any of the following crimes and offenses:

1. In New Jersey, any crime or disorderly persons offense:

i. Involving danger to the person, meaning those crimes and disorderly persons offenses set forth at N.J.S.A. 2C:11-1 et seq., 2C:12-1 et seq., 2C:13-1 et seq., 2C:14-1 et seq., or 2C:15-1 et seq.;

ii. Against the family, children, or incompetents, meaning those crimes and disorderly persons offenses set forth in N.J.S.A. 2C:24-1 et seq.; or

iii. A crime or offense involving the manufacture, transportation, sale or possession, or use of a controlled dangerous substance as defined in the New Jersey Controlled Dangerous Substances Act, P.L. 1970, c. 226 (N.J.S.A. 24:21-1 et seq.); or

2. In any other state or jurisdiction, of conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described at (b)1 above.

(c) An individual shall have 14 days from the notice of disqualification to challenge the accuracy of the fingerprint-based criminal history background check.

(d) If a prospective community agency employee or community agency head refuses to consent to, or cooperate in, securing of a fingerprint-based criminal history background check, the person shall not be considered for employment.

(e) If a current agency head or employee who is required, pursuant to this section, to undergo a fingerprint-based criminal history background check refuses to consent to, or cooperate in, the securing

of a fingerprint-based criminal history background check, that person shall be immediately removed from their position and their employment terminated.

(f) A conviction of a crime or disorderly persons offense against children, as set forth at N.J.S.A. 2C:24-4 and 4.1, shall permanently disqualify individuals from employment at a community agency.

(g) Notwithstanding any other provision of this chapter to the contrary, except for (f) above, no individual shall be disqualified from employment on the basis of any conviction disclosed by a fingerprint-based criminal history background check if the individual has affirmatively demonstrated to the Department, clear and convincing evidence of the individual's rehabilitation. In determining whether an individual has affirmatively demonstrated rehabilitation, the following factors shall be considered:

1. The nature and responsibility of the position that the convicted individual would hold, has held, or currently holds, as the case may be;

2. The nature and seriousness of the offense;

3. The circumstances under which the offense occurred;

4. The date of the offense;

5. The age of the individual when the offense was committed;

6. Whether the offense was an isolated or repeated incident;

7. Any social conditions that may have contributed to the offense; and

8. Any evidence of rehabilitation including, but not limited to, evidence of good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the individual under their supervision.

(h) The individual shall have no longer than 14 days from the date of the written notice of disqualification to provide evidence of affirmatively demonstrated rehabilitation to the Department as provided pursuant to this section.

1. The individual may make a one-time request to the Department for an additional 14 days to gather and provide evidence of rehabilitation.

(i) The Department shall have no longer than 90 days from the date of receipt of evidence of the individual's asserted affirmatively developed rehabilitation to make a determination on the individual's qualification. The Department shall notify the individual and the community agency, in writing, of the determination of the individual's qualification or disqualification no longer than 90 days from the date of receipt of evidence of the individual's affirmatively developed rehabilitation. The written notice may be transmitted electronically if the individual authorizes the Department to transmit the information electronically.

SUBCHAPTER 5. INTENSIVE IN-COMMUNITY MENTAL HEALTH REHABILITATION SERVICES

10:77-5.2 Definitions

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

"Fingerprint-based criminal history background check" means determination of whether a person has a criminal record by cross-referencing that person's name and fingerprints with those on file with the State Bureau of Identification in the New Jersey Division of State Police.

...

10:77-5.9 Staff requirements

(a)-(d) (No change.)

(e) All staff members [coming into direct contact with the children, youth or young adults] who may provide in-person services directly to beneficiaries shall successfully complete a fingerprint-based criminal history background check through the Department of Human Services' Office of Program Integrity and Accountability (OPIA) (see N.J.A.C. 10:77-5.15).

(f) All employees shall have a valid driver's license if his or her job functions include the operation of a vehicle used in the transportation of the [children, youth] **children/youth** or young adults, or their family or caregiver. Transportation is not considered a separately reimbursable intensive in-community service; however, if the provider is rendering other therapeutic interventions in the vehicle while operating the vehicle, the provider must have a valid driver's license.

1. Agencies shall provide the Children's System of Care (CSOC), within the Department of Children and Families (DCF), with an attestation of valid driver's licenses for all employees whose job responsibilities may require them to transport children/youth or young adults.

2. An agency shall complete an attestation of a valid driver's license for every employee whose job responsibilities may require them to transport children/youth or young adults and shall submit the attestation to the CSOC as part of a new provider application or change of staff request before the employee can provide services to children/youth or young adults.

i. The agency shall have a policy requiring all employees whose job responsibilities may require them to transport children/youth or young adults to provide proof of renewal of an expired license immediately upon renewal.

3. Agencies shall attest, annually, that those staff members required to have a valid driver's license pursuant to this subsection have a valid driver's license in their possession and that the license was physically reviewed and noted to have a future expiration date. Staff with license expiration dates within two months of the license examination date should present a copy of the renewed license upon renewal. Agencies shall provide the attestation by January 31 of each year using the required verification available on the DCF website. Completed forms shall be submitted electronically to the CSOC Office of Community Services, at HCprovider.Communications@dcf.nj.gov.

(g) (No change.)

10:77-5.14 General provider recordkeeping requirements

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

(d) In addition to the specific records required to be maintained for specific staff, the following information shall also be maintained for all individuals providing, or supervising the provision of, intensive in-community mental health rehabilitation services:

1. (No change.)

2. Verifiable written documentation of successful completion of a fingerprint-based criminal history background check conducted by [a recognized and reputable search organization] the DHS Office of Program Integrity and Accountability (OPIA) in accordance with N.J.A.C. 10:77-5.15 for all staff [having direct contact with children] who may provide in-person services directly to beneficiaries.

10:77-5.15 Fingerprint-based criminal history background checks

(a) Any community agency under contract with the Department of Human Services shall not pay, or contract with, any employee or agency head for the provision of services unless it has first been determined that no criminal history record information exists on file in the State Bureau of Identification in the Division of State Police, that would disqualify the community agency head or the community agency employees from such employment. The determination shall be made by the DHS Office of Program Integrity and Accountability (OPIA).

1. Each community agency head and all community agency employees who may provide in-person services directly to beneficiaries shall be required to cooperate with a fingerprint-based criminal history background check provided by DHS/OPIA. The agency shall submit the names of the individuals requiring background checks to OPIA. The Department shall notify the community agency if an individual has been determined qualified or disqualified and the community agency shall notify the individual. The Department's determination of qualification shall not require the community agency to employ the individual. The Department's determination of disqualification shall require the community agency

or community care residence to terminate employment or not offer employment to the individual.

2. All current agency heads and staff who have not completed a fingerprint-based criminal history background check and all new agency heads and staff who may provide in-person services directly to beneficiaries shall complete the fingerprint-based criminal history background check process through the Employment Controls and Compliance Unit (ECCU) DHS Office of Program Integrity and Accountability (OPIA).

3. All current agency heads and staff that have had a previous background check must complete the fingerprint-based criminal history background check process through the Employment Controls and Compliance Unit (ECCU) within the DHS Office of Program Integrity and Accountability (OPIA) by (two years after effective date of this section).

4. For all staff background checked by ECCU, the State Police "flag" each fingerprint and notify ECCU when it is associated with a criminal activity subsequent to the initial background check. If an employee is identified as having been associated with an arrest, ECCU will reach out to DMAHS for a final determination and the Children's System of Care (CSOC) within the Department of Children and Families (DCF) will be notified of the determination. For those staff who are determined ineligible for employment, CSOC will notify the employer. That staff shall stop working immediately.

5. Once an individual is fingerprinted, if they are not hired, or the employee's employment terminates for any reason, the provider shall submit a flag removal form to ECCU. The provider may contact the help desk through email at ECCU.FARA@dhs.nj.gov or call 609-262-0207 for assistance, if needed.

(b) An individual shall be disqualified from employment if that individual's criminal history record background check reveals a record of conviction of any of the following crimes and offenses:

1. In New Jersey, any crime or disorderly persons offense:

i. Involving danger to the person, meaning those crimes and disorderly persons offenses set forth at N.J.S.A. 2C:11-1 et seq., 2C:12-1 et seq., 2C:13-1 et seq., 2C:14-1 et seq., or 2C:15-1 et seq.;

ii. Against the family, children, or incompetents, meaning those crimes and disorderly persons offenses set forth at N.J.S.A. 2C:24-1 et seq.; or

iii. A crime or offense involving the manufacture, transportation, sale, or possession or use of a controlled dangerous substance, as defined in the New Jersey Controlled Dangerous Substances Act, P.L. 1970, c. 226 (N.J.S.A. 24:21-1 et seq.); or

2. In any other state or jurisdiction, of conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described at (b)1 above.

(c) An individual shall have 14 days from the notice of disqualification to challenge the accuracy of the fingerprint-based criminal history background check.

(d) If a prospective community agency employee or community agency head refuses to consent to, or cooperate in, securing of a fingerprint-based criminal history background check, the person shall not be considered for employment.

(e) If a current agency head or employee who is required, pursuant to this section, to undergo a fingerprint-based criminal history background check refuses to consent to, or cooperate in, the securing of a fingerprint-based criminal history background check, that person shall be immediately removed from their position and their employment terminated.

(f) A conviction of a crime or disorderly persons offense against children, as set forth at N.J.S.A. 2C:24-4 and 4.1, shall permanently disqualify individuals from employment at a community agency.

(g) Notwithstanding any other provisions of this chapter to the contrary, except for (f) above, no individual shall be disqualified from employment on the basis of any conviction disclosed by a criminal history record background check if the individual has affirmatively demonstrated to the Department clear and convincing evidence of the individual's rehabilitation. In determining whether an individual has affirmatively demonstrated rehabilitation, the following factors shall be considered:

1. The nature and responsibility of the position that the convicted individual would hold, has held, or currently holds, as the case may be;
2. The nature and seriousness of the offense;
3. The circumstances under which the offense occurred;
4. The date of the offense;
5. The age of the individual when the offense was committed;
6. Whether the offense was an isolated or repeated incident;
7. Any social conditions that may have contributed to the offense; and
8. Any evidence of rehabilitation, including, but not limited to, evidence of good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the individual under their supervision.

(h) The individual shall have no longer than 14 days from the date of the written notice of disqualification to provide evidence of affirmatively demonstrated rehabilitation to the Department as provided pursuant to this section.

1. The individual may make a one-time request to the Department for an additional 14 days to gather and provide evidence of rehabilitation.

(i) The Department shall have no longer than 90 days from the date of receipt of evidence of the individual’s affirmatively developed rehabilitation to make a determination on the individual’s qualification. The Department shall notify the individual and the community agency, in writing, of the determination of the individual’s qualification or disqualification no longer than 90 days from the date of receipt of evidence of the individual’s affirmatively developed rehabilitation. The written notice may be transmitted electronically if the individual authorizes the Department to transmit the information electronically.

LAW AND PUBLIC SAFETY

(a)

**DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS
Midwifery Early Aspiration Abortion
Proposed New Rule: N.J.A.C. 13:35-2A.17A**

Authorized By: Board of Medical Examiners, Antonia Winstead, Executive Director.

Authority: N.J.S.A. 45:9-2.

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

Proposal Number: PRN 2023-091.

Submit comments by November 17, 2023, to:

Antonia Winstead, Executive Director
Board of Medical Examiners
140 East Front Street, 2nd Floor
PO Box 183
Trenton, NJ 08625

or electronically at: <http://www.njconsumeraffairs.gov/Proposals/Pages/default.aspx>

The proposal of the agency follows:

Summary

On December 6, 2021, the Board of Medical Examiners (Board) repealed N.J.A.C. 13:35-4.2, which provided that only a physician licensed to practice medicine and surgery in New Jersey could perform a termination of pregnancy procedure. At the same time, the Board adopted new N.J.A.C. 13:35-4A.19, which recognizes that a physician licensed to practice medicine and surgery in New Jersey may authorize an “advanced practice clinician” to perform “minor procedures” consistent with their

respective scopes of practice and as addressed within their individual collaborating agreements. Pursuant to N.J.A.C. 13:35-4A.3, “advanced practice clinicians” includes physician assistants, advanced practice nurses, certified nurse midwives (CNMs), and certified midwives (CMs). The definition of “minor procedures” includes, among other things, early aspiration abortions. The Board now proposes new N.J.A.C. 13:35-2A.17A to establish the requirements for CNMs and CMs to perform early aspiration abortions.

Proposed new N.J.A.C. 13:35-2A.17A defines the term “authorized practitioner” to include a physician, a CNM, or CM who has met the requirements of the proposed new rule, or an advanced practice nurse, or physician assistant whose scope of practice includes the performance of early aspiration abortions, as determined by the Board of Medical Examiners, Midwife Liaison Committee, Physician Assistant Advisory Committee, or the Board of Nursing. The rule also defines “early aspiration abortion” as “a procedure that terminates a pregnancy in the first trimester of pregnancy (defined as up to 14 completed weeks as calculated by an estimate of gestational age that utilizes the last menstrual period, ultrasound, and/or physical examination, as appropriate to the standard of care) utilizing manual or electric suction to empty the uterus.”

A CNM or CM could perform an early aspiration abortion once the CNM or CM has met the coursework and clinical education requirements of the proposed new rule. The course the CNM or CM will be required to complete would have to be offered by an accredited college or university or by an organization recognized by the American College of Obstetrics and Gynecology, the American College of Nurse Midwives, or the National Association of Nurse Practitioners in Women’s Health. This course must cover the Early Abortion Training Curriculum, the Training in Early Abortion for Comprehensive Healthcare (TEACH), published by the Bixby Center for Global Reproductive Health, which is an interactive curriculum with tools to train new reproductive health providers, or a curriculum of comparable scope and rigor. Under the supervision of an authorized practitioner, a CNM or CM will also have to complete the Core Competencies for Early Abortion Care included in the TEACH or a program of comparable scope and rigor. A CNM or CM who has completed coursework and clinical experience in another state that is substantially similar to that required by the proposed new rule will be authorized to perform early aspiration abortions in New Jersey.

The proposed new rule sets forth the documentation that a CNM or CM will need to retain regarding the coursework and clinical education that are required to perform early aspiration abortions. The proposed new rule also requires CNMs and CMs who have met the requirements of the proposed new rule to amend their clinical guidelines to indicate that early aspiration abortions are within their scope of practice.

The Board has provided a 60-day comment period for this notice of proposal. Therefore, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rule will benefit CNMs and CMs who seek to perform early aspiration abortions by providing clear guidance as to the coursework and clinical education they must complete to perform early aspiration abortions safely and effectively. The proposed new rule will also have a positive impact on individuals seeking early aspiration abortions by expanding access to early aspiration abortions in a manner that complies with safety and health standards. By enlarging the pool of practitioners who are authorized to perform early aspiration abortions, the proposed rule will make it less likely that individuals seeking early aspiration abortions will have to travel long distances to access abortion care, thus reducing delays in care and the higher costs and increased risks associated with such delays.

Economic Impact

The proposed new rule will impose costs on CNMs and CMs who seek to provide early aspiration abortions. Such CNMs and CMs will likely pay a fee for the required coursework and clinical education required by the rule. By enlarging the pool of practitioners who are authorized to perform early aspiration abortions, the proposed rule will make it less likely that individuals seeking early aspiration abortions will have to travel long distances to access abortion care, thus reducing the higher costs associated