

for public water systems that use surface water or ground water under the direct influence of surface water and discretionary changes to the National Regulations, 40 CFR 141, Subpart H; and (6) construction standards and permits, fees, requirements for physical connections between an approved and unapproved water supply at N.J.A.C. 7:10-10, 11, 12, and 13.

Any further action proposing amendments to the Safe Drinking Water Act rules would be the subject of a separate notice in the New Jersey Register.

(a)

DIVISION OF FISH AND WILDLIFE

**Notice of Administrative Change
Crab and Lobster Management
Modification of Reporting Requirements
N.J.A.C. 7:25-14.16**

Effective Date: March 8, 2024.

Take notice that, pursuant to N.J.A.C. 7:25-14.19(a), the Commissioner of the Department of Environmental Protection (Department), with the approval of the New Jersey Marine Fisheries Council (Council) at its January 4, 2024, meeting, has modified the reporting requirements for the commercial lobster fishery. These actions have been taken to comply with the Atlantic States Marine Fisheries Commission's (ASMFC) management plan for American lobster.

In April 2023, the ASMFC American Lobster Management Board approved Addendum XXIX to Amendment 3 to the Interstate Fishery Management Plan for American Lobster ([63d14df0AmLobsterAddendumXXIX_JonahCrabAddendumIV_March2022.pdf](#) ([asmfc.org](#))). The Addendum established electronic tracking requirements for Federally permitted vessels in the American lobster fishery, with the goal of collecting high resolution spatial and temporal effort data to support ongoing marine spatial planning efforts and enforcement in Federal waters. Specifically, electronic tracking devices are required for vessels with commercial trap gear area permits for Lobster Conservation Management Areas (LCMAs) 1, 2, 3, 4, 5, and Outer Cape Cod. The data collected through electronic tracking will improve the stock assessment's ability to estimate exploitation and abundance for American lobster by providing size composition data at a finer resolution than what is currently available. Additionally, enhanced monitoring will provide improvements to the models used to assess the fishing locations and their associated risk to endangered whales.

To cover the costs incurred by the fishing industry for the installation of new electronic tracking devices, Federal funding has been provided to states through the Atlantic States Marine Fisheries Commission. This assistance may be used by the applicable states to help defray the cost of compliance with new regulations, including for gear modification, configuration, and marking within the Northeast lobster fisheries, both in Federal and state waters.

These changes will be reflected in the Division of Fish and Wildlife rules at N.J.A.C. 7:25-14.16(a). As required at N.J.A.C. 7:25-14.19(a), changes to N.J.A.C. 7:25-14.16 are published in the New Jersey Register, on the Department's website, and in the New Jersey Fish and Wildlife commercial regulation publication.

Full text of the changed rule follows (additions indicated in boldface **thus**):

SUBCHAPTER 14. CRAB AND LOBSTER MANAGEMENT

7:25-14.16 Eligibility for lobster pot permit and pot allocation

(a) As of December 31, 2001, a vessel shall not land lobster harvested by a lobster pot unless such vessel is in the possession of a valid New Jersey Lobster Pot Permit issued in the name of the vessel and owner, except as provided for at N.J.A.C. 7:25-18.5(g)11i(4).

1.-11. (No change.)

12. All vessels with a Federal American lobster permit shall have an approved vessel tracker installed. Installation of the tracking

device must be completed, including certification by Department staff, prior to the permit holder's first fishing trip. This vessel tracker must remain powered and transmitting when the vessel is in the water regardless of landing state, trip type, location fished, or target species.

HUMAN SERVICES

(b)

DIVISION OF DEVELOPMENTAL DISABILITIES

**Contribution to Care and Maintenance
Requirements**

Readoption with Amendments: N.J.A.C. 10:46D

Proposed: November 6, 2023, at 55 N.J.R. 2240(a).

Adopted: January 30, 2024, by Sarah Adelman, Commissioner, Department of Human Services.

Filed: February 27, 2024, as R.2024 d.023, **without change**.

Authority: N.J.S.A. 30:1-12 et seq., 30:4-60 et seq., and 30:6D-5.

Effective Dates: February 27, 2024, Readoption;
April 1, 2024, Amendments.

Expiration Date: February 27, 2031.

Summary of Public Comments and Agency Responses:

The Division of Developmental Disabilities (Division) received two comments. A summary of the comments and the Division's response follows:

COMMENT: The Division received a comment from Dorothy Blakeslee, parent of an individual served by the Division. Ms. Blakeslee expressed that it is difficult to keep an individual's assets under the \$2,000 Federal threshold to maintain Medicaid eligibility and inquired whether it is possible to include language that recognizes this issue.

RESPONSE: The Division thanks the commenter for their input. The Division notes, however, that the issue raised by the commenter is outside the scope of this rulemaking, which concerns the contribution to care and maintenance payable by individuals to the State.

COMMENT: The Division received a comment from Eileen Cole, parent of an individual served by the Division. Ms. Cole requested a reduction in the contribution to care percentage for individuals, such as her son, who pay provider agencies when they are living in residential settings funded through fee-for-service.

RESPONSE: The Division thanks the commenter for their input. The Division notes, however, that the issue raised by commenter, which concerns contributions paid to a provider agency, goes beyond the scope of the rulemaking, which concerns contribution to care paid by individuals to the State, rather than to individuals served through the fee-for-service system.

Federal Standards Statement

The rules readopted with amendments apply to State funding, and not Medicaid funding. No Federal requirements or standards apply to the reimbursement pursuant to the contribution to care and maintenance as part of this rulemaking. Therefore, a Federal standards analysis is not required.

Full text of the of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 10:46D.

Full text of the adopted amendments follows:

SUBCHAPTER 1. GENERAL PROVISIONS

10:46D-1.1 Purpose; authority

(a) Pursuant to N.J.S.A. 30:6D-1 (P.L. 1995, c. 155), the Division of Developmental Disabilities, Department of Human Services (Division) has established guidelines and criteria for determining the financial ability of persons served and that of their legally responsible relatives to contribute to the cost of care and maintenance when the individual receives residential services from the Division. The individual is also required to apply for all benefits, primarily the Medicaid DDD

Community Care Program, for which they are eligible and comply with the requirements of this program prior to residential placement by the Division. He or she is also required to maintain eligibility for these benefits in compliance with the requirements of this chapter.

(b) The individual is responsible to maintain those benefits. Generally, to remain eligible, the individual cannot have more than \$2,000 in cash assets that are not excludable as a resource. The Division’s Community Care Program is a Medicaid program, which provides Federal financial participation for services. It is, therefore, necessary for individuals to apply for the Medicaid DDD Community Care Program prior to the receipt of these services, to maximize Federal funds for program expansion for individuals not yet being offered services.

10:46D-1.2 Scope

(a) The provisions of this chapter shall apply to all individuals before they are provided residential services from the Division, with the exception of those individuals whose services are funded through Medicaid fee-for-service in which the State receives a Federal match. Individuals residing in residential settings whose services are funded through Medicaid fee-for-service in which the State receives a Federal match do not pay contribution to care to the Division. All individuals, including those whose services are funded through Medicaid fee-for-service are responsible to apply for the Medicaid DDD Community Care Program and all other benefits for which they are entitled. Individuals for whom the provisions of this chapter apply are required to submit financial information to determine their ability to contribute toward the cost of their placement.

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

10:46D-1.3 Definitions

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

“Assets” or “resources” means, but is not limited to, cash, trusts, bank accounts, certificates of deposit, stocks, bonds, mutual funds, real estate and savings bonds, and personal property pursuant to N.J.S.A. 30:4-25.1a.

“Benefits” means all current and future sources of cash and health assistance from Federal, State, or private entities, including, but not limited to, Medicare, Medicaid, the Medicaid DDD Community Care Program, State and Federal funds, and any third party support pursuant to statute, rule, order, or by contract.

“Cost of care and maintenance” means the daily rate set by the Commissioner of the Department of Human Services for the residential placement of individuals and community care homes (except respite homes) regulated pursuant to N.J.A.C. 10:44B, multiplied by the number of days the individual is, or was, in the placement.

“Division” or “DDD” means the Division of Developmental Disabilities and its staff.

“Medicaid DDD Community Care Program” means the Community Care Program, which is a Medicaid program that allows the State to waive certain Federal Medicaid eligibility criteria for individuals who meet eligibility for Division of Developmental Disabilities services and require an ICF/IID level of care.

SUBCHAPTER 2. FINANCIAL CRITERIA

10:46D-2.1 General standards

(a) The individual or his or her legally responsible relative shall be responsible to apply for the Medicaid DDD Community Care Program and to maintain eligibility for these benefits. The individual, or his or her legally responsible relative, shall also submit complete financial information necessary to assess contribution to care prior to placement or the delivery of services by the Division.

(b) The individual, or his or her legally responsible relative, shall be responsible to comply with all requirements to maintain continued eligibility for the Medicaid DDD Community Care Program benefits during the time services are provided by the Division.

(c) At the time of an offer of placement, the individual, legal guardian, and/or his or her LRR(s) shall be advised, in writing, by Division staff that it will be necessary to apply for the Medicaid DDD Community Care Program and all other benefits and to submit financial information in order for the Division to determine the ability of the individual and/or LRR(s) to contribute to the cost of care.

(d)-(i) (No change.)

(j) Should an individual be residentially placed by the Division on an emergency basis, the information required for a financial determination is due to the Division no more than 28 days following the date of placement. If the information is not provided within the required time frames, the Division may consider the individual’s circumstances on a case-by-case basis. Failure to provide the required documentation may result in the Department seeking any of the remedies set forth at N.J.A.C. 10:46D-5.1.

(k) (No change.)

10:46D-2.2 Determination of financial ability to pay

(a) The individual, or his or her legally responsible relative, shall be required to apply for the Medicaid DDD Community Care Program and all other benefits and to provide financial information, including, but not limited to, assets, resources, income, or insurance. The individual, or his or her legally responsible relative, shall comply with all requirements of the Medicaid DDD Community Care Program and N.J.A.C. 10:46D-1.1 to maintain eligibility for benefits.

(b)-(j) (No change.)

SUBCHAPTER 3. TREASURY FORMULA-DDD

10:46D-3.1 DDD Formula A-DDD(A) for persons over age 18

(a)-(b) (No change.)

(c) The individual, or his or her representative payee, is responsible to keep his or her accumulated funds under \$2,000 to ensure continued eligibility for the Medicaid DDD Community Care Program benefits.

(d)-(g) (No change.)

(h) All earnings from employment below minimum wage shall be exempt from determining an individual’s available income and shall not be considered part of the individual’s disposable income. Minimum wage is determined by the state in which an individual works. Contributions to the cost of care and maintenance from employment earnings at or above minimum wage shall be computed similar to the way in which the Social Security Administration counts earned income for Supplemental Security Income purposes. Contributions shall be determined, as follows:

1.-4. (No change.)

(i) The individual, or his or her representative payee, may utilize the funds from earned income, as he or she determines appropriate, however, he or she is responsible to maintain continued eligibility for the Medicaid DDD Community Care Program benefits.

SUBCHAPTER 5. TERMINATION

10:46D-5.1 Notice of termination

(a) While N.J.S.A. 30:4-25.9 provides the Division with the ability to terminate any services to the eligible individual within 90 days if the conditions of eligibility are not complied with, when the assessed contribution to the cost of care and maintenance is not received in a timely fashion, in all instances the Division will take a number of interim steps prior to initiating such final action, as delineated in this section.

(b)-(e) (No change.)

(f) Should the individual and/or LRR(s) request a revision of the amount to be paid or notify the Division of an inability to pay in accordance with N.J.A.C. 10:46D-2.2(i), the Division shall investigate the circumstances.

1.-2. (No change.)

(g)-(k) (No change.)

SUBCHAPTER 6. APPEALS PROCESS

10:46D-6.1 Appeals

(a) (No change.)

(b) Any change to unearned income or income from wages shall not be a basis for an appeal. Changes to income shall be addressed according to N.J.A.C. 10:46D-2.2(i).

(c)-(i) (No change.)

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Rehabilitative Services for Children

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

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

Proposed: September 18, 2023, at 55 N.J.R. 1977(a).

Adopted: January 31, 2024, by Sarah Adelman, Commissioner, Department of Human Services.

Filed: February 27, 2024, as R.2024 d.024, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

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

Effective Date: April 1, 2024.

Expiration Date: May 23, 2030.

Summary of Public Comment and Agency Response:

No comments were received.

Summary of Agency-Initiated Changes:

At N.J.A.C. 10:77-4.15(a)2 and 5.15(a)2, language is added to provide new and current agency heads and staff who are required to have a fingerprint-based background check, but who had not completed the check prior to the effective date of this rulemaking, up to 45 days after the effective date of this rulemaking to complete the background check. The language clarifies the original purpose of the rule by allowing a reasonable amount of time after the effective date to come into compliance with the requirement and avoid the unintended result of a current agency head or employee immediately being ineligible for employment.

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 assure 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 enrollments requirements for providers enrolling in a state Medicaid program. This includes the requirements related to criminal background checks.

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

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[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, 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 who may have direct contact with and/or 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, ensuring:

1.-11. (No change.)