

(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](mailto: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.)

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 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 the DHS Office of Program Integrity and Accountability (OPIA) in accordance with N.J.A.C. 10:77-4.15 for all staff 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) **\*immediately, but not later than May 16, 2024\***.

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)]\* \*April 1, 2026\***.

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](mailto: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 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 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 [IICprovider.Communications@def.nj.gov](mailto:IICprovider.Communications@def.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 the DHS Office of Program Integrity and Accountability (OPIA) in accordance with N.J.A.C. 10:77-5.15 for all staff 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) **\*immediately, but not later than May 16, 2024\***.

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 the effective date of this section)]\* \*April 1, 2026\***.

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](mailto: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.

**(a)**

**DIVISION OF FAMILY DEVELOPMENT  
Work First New Jersey Program  
Elimination of the Work First New Jersey  
(WFNJ)/Temporary Assistance for Needy Families  
(TANF) Family Cap Provisions; Funeral and  
Burial/Cemetery Costs**

**Adopted Amendments: N.J.A.C. 10:90-1.2, 2.6, 8.2,  
8.5, and 20.4**

**Adopted Repeal: N.J.A.C. 10:90-2.18**

Proposed: November 20, 2023, at 55 N.J.R. 2311(a).  
Adopted: February 23, 2024, by Sarah Adelman, Commissioner,  
Department of Human Services.  
Filed: March 5, 2024, as R.2024 d.026, **without change**.  
Authority: N.J.S.A. 30:1-12; and P.L. 2020, c. 99.  
Effective Date: April 1, 2024.  
Expiration Date: October 4, 2028.

**Summary of Public Comment and Agency Response:**  
The official comment period ended January 19, 2024. The Division of Family Development (DFD) received one public comment on the

rulemaking from Marlene Lao-Collins, Executive Director of the Catholic Charities of Trenton.

COMMENT: The commenter expressed strong support of the proposed amendments and repeal.

RESPONSE: DFD appreciates the commenter's support.

**Federal Standards Statement**

The Department of Human Services has reviewed the applicable Federal laws and regulations. The adopted amendments and repeal include standards that do not exceed those at 45 CFR Part 260, Temporary Assistance for Needy Families. Therefore, a Federal standards analysis is not required.

Full text of the adoption follows:

**SUBCHAPTER 1. GENERAL PROVISIONS**

10:90-1.2 Opportunity and decision to apply

(a)-(e) (No change.)

(f) Responsibilities of the county or municipal agency during the initial contact shall include, but not be limited to:

1. Explaining the programs/services and detailing the applicant's rights and responsibilities including immediate need, his or her mandatory cooperation with Child Support and Paternity (CSP) requirements, work requirements, family violence provisions, personal identification requirements, time limits, requirements for affidavits regarding felony conviction, parole violation, drug conviction, and minor parent requirements;

2.-10. (No change.)

**SUBCHAPTER 2. NON-FINANCIAL ELIGIBILITY REQUIREMENTS**

10:90-2.6 Family violence

(a) Certain WFNJ program requirements shall be waived for those recipients who have been screened and identified through an affidavit as victims of family violence, rape, or incest and assessed by the victim service provider agency (see N.J.A.C. 10:90-20). The program requirements that shall be waived upon request of the individual include, but are not limited to, the following, when compliance would make it more difficult for the individual to escape family violence, or when present, past, or future family violence impacts on the individual's ability to comply:

1.-2. (No change.)

Recodify existing 4.-6. as 3.-5. (No change in text.)

(b) (No change.)

10:90-2.18 (Reserved)

**SUBCHAPTER 8. SPECIAL PROVISIONS FOR PAYMENT OF FUNERAL AND BURIAL EXPENSES**

10:90-8.2 Persons who may be eligible

(a) Claims for funeral and burial expenses may be received and considered with respect to:

1.-11. (No change.)

Recodify existing 13.-19. as 12.-18. (No change in text.)

(b) (No change.)

10:90-8.5 Authorization of payment

(a) Funeral services and cemetery costs shall be separated and paid separately. Funeral directors shall complete and submit Form WFNJ-11M, Affidavit and Petition for Payment Mortuary, to the county or municipal agency to receive payment. Cemetery representatives shall complete and submit Form WFNJ-11C, Affidavit and Petition for Payment Cemetery, to the county or municipal agency to receive payment. The total maximum allowances for a decedent is the sum of the applicable funeral allowance and cemetery allowance pursuant to (a)1, 2, 3, and 4 below.

1. The allowance for funeral services, exclusive of cemetery costs are, as follows: