

# RULE ADOPTIONS

## ENVIRONMENTAL PROTECTION

(a)

### DIVISION OF WATER QUALITY

#### Notice of Readoption Standards for Individual Subsurface Sewage Disposal Systems

##### Readoption: N.J.A.C. 7:9A

Authority: N.J.S.A. 13:1D-1 et seq.; 26:3A2-21 et seq.; 58:10A-1 et seq., including 58:10A-16; and 58:11-23 et seq.

Authorized By: Catherine R. McCabe, Commissioner, Department of Environmental Protection.

Effective Date: February 4, 2019.

New Expiration Date: February 4, 2026.

**Take notice** that, pursuant to N.J.S.A. 52:14B-5.1, the Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A, are readopted and shall continue in effect for a seven-year period. The rules were scheduled to expire on March 7, 2019. The Department of Environmental Protection (Department) has reviewed these rules and has determined that the rules should be readopted because they are necessary, reasonable, and proper for the purpose for which they were originally promulgated. In accordance with N.J.S.A. 52:14B-5.1.c(1), timely filing of this notice extended the expiration date of the chapter seven years from the date of filing.

The purpose of the Standards for Individual Subsurface Sewage Disposal Systems is to protect public health as required by the Realty Improvement Sewerage and Facilities Act (1954), N.J.S.A. 58:11-23, and to prevent water pollution as required by the Water Pollution Control Act, N.J.S.A. 58:10-1 et seq. The rules provide standards for the proper location, design, construction, installation, alteration, repair, and operation of individual subsurface sewage disposal systems (commonly referred to as septic systems). These standards protect public health and safety, the environment, and potable water supplies, as well as safeguarding fish, aquatic life, and ecological values.

The Department is currently in the process of reviewing the rules to determine necessary amendments. Changes under consideration include potential amendment of the certification requirements applicable to authorized installers of advanced pretreatment devices. Any amendments to the Standards for Individual Subsurface Sewage Disposal Systems determined to be appropriate will be the subject of a separate rulemaking published in a future issue of the New Jersey Register.

## HIGHER EDUCATION

(b)

### HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY

#### Student Loan and College Savings Programs Tuition Reimbursement Program for Psychiatrists Adopted New Rules: N.J.A.C. 9A:10-3

Proposed: June 4, 2018, at 50 N.J.R. 1333(a).

Adopted: January 23, 2019, by the Higher Education Student Assistance Authority, Christy Van Horn, Chairperson.

Filed: February 5, 2019, as R.2019 d.025, **without change**.

Authority: P.L. 2017, c. 126, and N.J.S.A. 18A:71C-59 et seq.

Effective Date: March 4, 2019.

Expiration Date: October 26, 2023.

#### Summary of Public Comments and Agency Responses:

The comment period officially ended on August 3, 2018. The Higher Education Student Assistance Authority received comments from Jean Public; Lori Leotta, LCSW, Vice President of National Client Partnerships, Beacon Health Option of New Jersey; and joint comments from Patricia DeCotiis, Executive Director, New Jersey Psychiatric Association and Mishael Azam, COO and Senior Manager, Legislative Affairs, Medical Society of New Jersey. The comments are summarized below along with the Higher Education Student Assistance Authority's responses.

**COMMENT:** Jean Public expressed concern that the proposed rules did not include fines or penalties for failure to complete four years of service. She stated that participants would be able to "take the monies and do nothing to provide the payback services to the citizens of nj. [sic]" Ms. Public added that she does not believe suspension is enough for those who violate their contract and that the participants should be required to "repay the monies they took and then did not complete their part of the bargain."

**RESPONSE:** In order to ensure that participants do not receive tuition reimbursement for services not rendered, the proposed rules provide that the payments are made upon completion of each year of service. Participants who do not complete a year of service will not receive a reimbursement payment.

**COMMENT:** Ms. Leotta expressed Beach Health Option's support of the proposed rules. She stated that "access to mental health services is paramount in allowing our members and citizens realize their hopes for better health and recovery," adding that "Beacon strongly supports the goals of the underlying statute, P.L. 2017 c. 126 (N.J.S.A. 18A:71C-59 et seq.) and the proposed regulations at N.J.A.C. 9A:10-3 et seq., to incentivize medical students to enter the field of psychiatry."

**RESPONSE:** The Higher Education Student Assistance Authority appreciates the support.

**COMMENT:** Ms. DeCotiis and Ms. Azam requested that the Authority create a broad and inclusive list of the State's underserved areas. They asked for the list to be published with the application and instructions and for the list to be expedited so that eligible participants could start applying and would know if their potential location is eligible. Ms. DeCotiis and Ms. Azam recommended that New Jersey municipalities with more than 20% of their households under 200% of the Federal poverty level be automatically deemed a State underserved area.

**RESPONSE:** HESAA is not authorized to create the list of State underserved areas. Pursuant to N.J.S.A. 18A:71C-62, the Commissioner of Health, in consultation with the Commissioner of Human Services, shall designate the State underserved areas, which have a shortage of psychiatrists.

Upon receipt from the Commissioner of Human Services, HESAA will provide the list of State underserved areas with the application materials.

**COMMENT:** Ms. DeCotiis and Ms. Azam ask "that there is no cap imposed on 'projected number of psychiatrists in each area' so that applicants are not rejected."

**RESPONSE:** While the rules implement the statutory requirement that the projected number of psychiatrists in each area be provided to the Authority, they do not impose a cap on the number of psychiatrists that will be accepted into the program from each area.

**COMMENT:** Ms. DeCotiis and Ms. Azam expressed their appreciation that the eligibility requirements in N.J.A.C. 9A:10-3.4 provide potential participants with the ability to apply for the program prior to moving to New Jersey as well as in anticipation of licensure and employment. They stated their belief that students who live in another state should be able to apply before moving to New Jersey.

**RESPONSE:** The Higher Education Student Assistance Authority appreciates the support.

**COMMENT:** Ms. DeCotiis and Ms. Azam request an amendment to N.J.A.C. 9A:10-3.4(a)3, so that it reads "Apply ... after completing an accredited residency training program in psychiatry or completing an accredited fellowship in psychiatry, including child and adolescent psychiatry." They stated that "[t]hrough this requirement tracks closely

with the statute, it mistakenly narrows applicants by excluding those who complete fellowships in other subspecialties like addiction. This intent is clearly stating the definition of 'State underserved area,' which includes all physicians 'in the specialty of psychiatry.'

RESPONSE: N.J.S.A. 18A:71C-61.c specifically narrows eligibility to applicants who apply within one year of "... completing an accredited fellowship in child and adolescent psychiatry ..." The statute does not grant HESAA the authority to expand that eligibility criterion.

COMMENT: Ms. DeCotiis and Ms. Azam request amendments to N.J.A.C. 9A:10-3.4 and 3.5, so that the program does not have an application window or deadline. They believe that the application window and deadline "arbitrarily narrow the program eligibility ..." In addition, Ms. DeCotiis and Ms. Azam request that the Authority delete the requirement of N.J.A.C. 9A:10-3.5(c), which ranks applicants in the event of insufficient funds to select all applicants who meet the eligibility criteria. Ms. DeCotiis and Ms. Azam believe that they "may lose dedicated physicians to employment opportunities outside of underserved areas or other states" if they have to wait until September to find out if they can participate in the program.

RESPONSE: In consultation with the Department of Health and the administrators of the Primary Care Loan Redemption program, the Authority determined that the most efficient way to administer the program was to provide the applicants a window in which to apply. Past experience has shown that when there are limited funds and applicants must apply within one-year of graduation there is uncertainty as to whether they will ever be accepted into the program. Applicants should not have to languish on a waiting list with no guaranty of ever being accepted into the program. Within the scope of the enabling statute, these rules provide applicants with two different windows within which to apply, ensuring both adequate time to apply and certainty with regards to acceptance into the program. Additionally, as with the similar existing Primary Care Practitioner Loan Redemption Program, in the event there are insufficient funds to select all eligible applicants, it is necessary to define the selection procedure in the rules.

COMMENT: Ms. DeCotiis and Ms. Azam advised that many psychiatrists are self-employed and, therefore, request amendments to N.J.A.C. 9A:10-3.2, 3.5, and 3.7 to permit self-employed psychiatrists to participate in the program.

RESPONSE: As an additional check and balance in this program, in order to prevent fraud and to protect public funds, a certification from a third-party employer is required for participation.

#### Federal Standards Statement

A Federal standards analysis is not required since the adopted new rules are not subject to any Federal requirements or standards, with the exception of requiring participants to agree to limit fees charged to recipients of benefits under the Federal Medicare Program established pursuant to Pub. L. 89-97 (42 U.S.C. §§ 1395 et seq.).

Full text of the adopted new rules follows:

### SUBCHAPTER 3. TUITION REIMBURSEMENT PROGRAM FOR PSYCHIATRISTS

#### 9A:10-3.1 Purpose and scope

The rules established by this subchapter provide the policies and procedures for participation in the Tuition Reimbursement Program for Psychiatrists administered by the Higher Education Student Assistance Authority. This Program shall provide reimbursement to Program participants for a portion of the eligible tuition expenses incurred by the participants in attending medical school.

#### 9A:10-3.2 Definitions

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

"Authority" means the Higher Education Student Assistance Authority.

"Eligible position" means full-time employment as a psychiatrist in a State underserved area or at a State psychiatric hospital, or at a combination thereof.

"Eligible tuition expenses" means tuition expenses that were incurred by a Program participant in attending an accredited medical school and were not covered by any grants or scholarships.

"Fiscal year" means the period of time beginning on July 1 of a given year and ending on June 30 of the following year.

"Full-time practice as a psychiatrist" means 35 hours per week in an eligible position.

"Mental healthcare services" means the assessment and treatment of individuals with mental health or substance use disorders.

"Program" means the Tuition Reimbursement Program for Psychiatrists established pursuant to N.J.S.A. 18A:71C-59 et seq.

"Program participant" means a psychiatrist who contracts with the Authority to provide mental health care services in a State underserved area or in a State psychiatric hospital in return for tuition reimbursement provided under the Program.

"State psychiatric hospital" means a State psychiatric hospital operated by the Department of Health and listed in N.J.S.A. 30:1-7.

"State underserved area" means a geographic area in this State that the Commissioner of Health, in consultation with the Commissioner of Human Services, determines, on the basis of health status and economic indicators, as having a physician shortage in the specialty of psychiatry.

#### 9A:10-3.3 Designation of underserved areas; list of available positions in State psychiatric hospitals

(a) In accordance with N.J.S.A. 18A:71C-62, the Commissioner of Health, in consultation with the Commissioner of Human Services, shall designate State underserved areas that have a shortage of psychiatrists. In designating State underserved areas, the Commissioner of Health shall consider health status criteria and economic indicators including, but not limited to, the financial resources of the population who reside in the area under consideration and the population's access to mental health care services.

(b) The Commissioner of Health shall transmit to the Authority, a list of the State underserved areas and the projected number of psychiatrists needed in each area.

(c) The Commissioner of Health shall transmit to the Authority, the list of the State psychiatric hospitals and the projected number of psychiatrists needed in each hospital.

#### 9A:10-3.4 Eligibility requirements for Program participation

(a) To be eligible for participation in the Program, an applicant must:

1. Maintain residency in the State during participation in the Program;
2. Be a State-licensed physician who has successfully completed all educational and residency training requirements for the practice of psychiatry by the date of execution of the Program contract;
3. Apply for the Program by September 30 of the calendar year after completing an accredited residency training program in psychiatry or completing an accredited fellowship in child and adolescent psychiatry;
4. Agree to practice full-time as a psychiatrist in a State underserved area and/or in a State psychiatric hospital for a period of one to four years in return for the tuition reimbursement provided under the Program; and
5. Not be simultaneously participating in either the Primary Care Practitioner Loan Redemption Program, N.J.S.A. 18A:71C-32 et seq., or in the Federally administered National Health Service Corps Loan Repayment Program, § 338B of the Public Health Service Act (42 U.S.C. § 2541-1).

#### 9A:10-3.5 Application procedures

(a) In order to apply for participation in the Program, an applicant must complete a tuition reimbursement Program application and submit it to the Authority between July 1 and September 30.

1. The Program application includes, but is not limited to:
- i. The applicant's identification and contact information;
  - ii. Certification of full-time employment from the applicant's current employer or anticipated employer, including the start date;
  - iii. Proof of medical school attendance and graduation; and
  - iv. Proof of the amount of the applicant's tuition expenses for each year of medical school.

(b) The Authority will select Program participants from among those applicants who meet the eligibility criteria established pursuant to the

N.J.A.C. 9A:10-3.4. Approval of the selected candidates is conditional upon the candidate receiving a license to practice medicine in New Jersey.

(c) In the event there are insufficient funds to select all of the applicants who meet the eligibility criteria, the Authority will rank all of the applications received during the application submission period using predetermined scoring evaluation criteria, which will be updated annually and posted on the Authority's website prior to July 1 each year.

(d) The Authority's approval of Program participation is subject to available funding.

#### 9A:10-3.6 Terms for tuition reimbursement

(a) An applicant who is selected for participation in the Program shall enter into a written contract with the Authority. The contract shall specify the total amount of eligible tuition expenses to be reimbursed by the State, not to exceed 25 percent of the participant's eligible tuition expenses for the one academic year of medical school attendance in which tuition was the lowest, in return for each full year of service satisfactorily completed by the participant, not to exceed four years. The contract shall require a program participant to:

1. Charge for professional services at the usual and customary rate prevailing in the State underserved area, but allow a patient who is unable to pay that charge to pay at a reduced rate or receive care at no charge;

2. Not discriminate against any patient in the provision of mental health care services on the basis of that person's ability to pay or source of payment; and

3. Agree not to charge in excess of the limiting fee for a service, as determined by United States Secretary of Health and Human Services, to a recipient of benefits under the Federal Medicare program established pursuant to Pub. L. 89-97 (42 U.S.C. §§ 1395 et seq.).

(b) In order to maintain Program eligibility a participant must:

1. Maintain residency in the State;

2. Maintain a license to practice medicine in the State;

3. Annually submit a certification signed by his or her employer verifying his or her continued employment and satisfactory performance in an eligible position.

(c) If a participant changes employers while participating in the Program, he or she must provide the Authority with a certification signed by the previous full-time employer containing the termination date from that position and a certification from the new full-time employer containing the start date for that position and verification of the participant's continued employment and satisfactory performance in an eligible position. If there is a gap in full-time service between eligible positions, the service obligation will be extended a commensurate amount of time to complete a full year of service.

#### 9A:10-3.7 Termination or suspension of the participant's tuition reimbursement contract

(a) The Authority shall terminate the participant's employment service obligation and cancel the tuition reimbursement contract if it determines:

1. On the basis of a sworn affidavit of a qualified physician, that the participant is totally and permanently disabled;

2. On the basis of a death certificate, or other evidence of death that is conclusive under State law, that the participant has died;

3. On the basis of substantiating documentation as may be deemed necessary by the Authority upon specific case review, that continued enforcement of the employment service obligation may result in extreme hardship for the participant;

4. That the participant is no longer employed in a qualified position;

5. That the participant has been convicted of a felony and/or a high misdemeanor, as defined in N.J.S.A. 2C:1-4.d, or has committed an act of gross negligence in the performance of his or her employment service obligation; or

6. That the participant's license to practice has been revoked or suspended for cause.

(b) The Authority may suspend the participant's employment service obligation and the tuition reimbursement contract if it determines, on the basis of substantiating documentation as may be deemed necessary by the Authority upon specific case review, that continued enforcement of the employment service obligation may result in extreme hardship for the participant. Extreme hardships include, but are not limited to: temporary

disability, military action, or temporary suspension of professional license pending the outcome of an investigation.

1. The Authority may suspend the employment service obligation and the tuition reimbursement contract of the Program participant for a period of up to two calendar years from the date the suspension commences. At the end of the first year of suspension, the participant must provide the Authority with substantiating documentation, as defined in this subsection, to renew the suspension for a second year.

2. The suspension, as stipulated in (b)1 above, may be extended beyond two years for exceptional circumstances at the discretion of the Authority on the basis of substantiating documentation, as defined in this subsection.

(c) The Higher Education Student Assistance Authority shall have final decision making authority to terminate a Program participant's employment service obligation and cancel the tuition reimbursement contract.

#### 9A:10-3.8 Appeals process

(a) When an applicant has received a notification of ineligibility for Program participation, he or she may submit a written appeal to the Authority within 30 days of the date of the notification. The written appeal must include the following:

1. A copy of the notification of ineligibility received by the applicant from the Authority; and

2. The reason(s) why the applicant feels he or she is eligible to participate in the Program along with any documentation that the applicant has obtained to support the appeal, if applicable.

(b) The applicant will receive a written response from the Authority concerning the determination of his or her eligibility for Program participation within 30 days of the receipt of the appeal.

## (a)

### EDUCATIONAL OPPORTUNITY FUND

#### Grant Amounts

#### Adopted Amendments: N.J.A.C. 9A:11-2.6 and 3.4

Proposed: September 4, 2018, at 50 N.J.R. 1924(a).

Adopted: January 31, 2019, by the Educational Opportunity Fund Board of Directors, Dr. Hasani Carter, EOF Executive Director.

Filed: January 31, 2019, as R. 2019 d.024, **without change**.

Authority: N.J.S.A. 18A:71-28 et seq., and 18A:71-33 through 36.

Effective Date: March 4, 2019.

Expiration Date: October 14, 2023

#### Summary of Public Comment and Agency Response:

The official comment period expired on November 3, 2018. The Educational Opportunity Fund Board of Directors received one comment from Jean Public.

COMMENT: "I am totally opposed to taxing citizens so that kids can go to college when we need tradespeople in New Jersey. More training in the trades should be taking place and the jobs for people with these talents are there, whereas college grads are a dime a dozen in today's world. The fund is objectionably misspending taxpayer dollars. It also is misspending taxpayer dollars when we allow sneaking lawbreaking foreigners to come waltzing into this country and get American tax dollars so that nothing is left for American citizens. I am very much opposed to U.S. taxpayer dollars being used for education for those who have no reason to be in the United States and are here illegally. Such use of taxpayer dollars is a complete scam on U.S. citizens who deserve the bounty of their being citizens, this comment is for the public record. Please receipt. I think this fund should be shut down. It is not effective. It is a total waste."

RESPONSE: Jean Public was thanked for his/her comment regarding the proposed amendments. The comments were noted and Jean Public was informed that the comments offered have no direct impact on the proposed amendments.

#### Federal Standards Statement

The adopted amendments do not require a Federal standards analysis under Executive Order No. 27 (1994) and N.J.S.A. 52:14B-22 et seq.,