

initiative. An agency's selection of eligible projects and programs shall comply with N.J.S.A. 26:2C-51.

(b) An agency's selection of an eligible program or project shall be supported by an evaluation of:

1. The degree to which the project or program is predicted to advance the objectives ranked as critical to the applicable initiative; and

2. The degree to which the project or program is predicted to advance the objectives ranked as beneficial to the applicable initiative.

(c) If circumstances require an agency to choose between more than one eligible program and/or project, the agency shall give priority to the program and/or project that is predicted to best advance the objective(s) identified as critical to the applicable initiative. If more than one eligible program and/or project are predicted to equally advance the objective(s) identified as critical to the applicable initiative, the agency shall give priority to the program and/or project predicted to best advance the objective(s) considered to be beneficial to the applicable initiative.

#### 7:27D-2.5 Award of economic aid pursuant to a program or project

Any individual award of economic aid made pursuant to a program or project shall be made in accordance with N.J.S.A. 26:2C-51. Notwithstanding the requirements of N.J.S.A. 26:2C-51, nothing in this chapter shall be construed as a limitation on an agency's authority, pursuant to that agency's funding practices, policies, or rules, to require an applicant for economic aid to submit an application, bid, or proposal disclosing other information or materials that may be considered by that agency in making an award of economic aid pursuant to an eligible program or project.

#### 7:27D-2.6 Measurable benefits

(a) An agency shall not provide funding from the Global Warming Solutions Fund, unless the program or project includes, in its design, a requirement that the critical objectives that are expected to be advanced by the program or project are measurable and verifiable for the duration of the program or project.

(b) The method used by the program or project to measure benefits shall:

1. Be sufficient to allow the funding agency, or one of the other agencies with appropriate technical expertise, to assess baselines, quantitative goals, and quantities of reductions or sequestration resulting from, or expected to result from, the project or program;

2. Include an estimate of the uncertainty associated with measured or estimated baselines, quantitative goals, and quantities of reductions or sequestration. The method shall also include a description of how the uncertainty will be addressed, or why addressing the uncertainty is impracticable; and

3. Incorporate existing, scientifically accepted, greenhouse gas emissions accounting protocols and include existing or otherwise readily available information, such as records of fuel or electricity use.

### SUBCHAPTER 3. STATE-OF-THE-ART ELECTRIC GENERATING FACILITIES

#### 7:27D-3.1 State-of-the-art electric generating facilities

(a) An electric generating unit is state of the art, for purposes of N.J.A.C. 7:27D-2.3(a)1i and ii, if it:

1. Is a unit whose primary activity is the production of useful electricity output or the production of useful electricity output and useful thermal energy output;

2. Demonstrates advances in the art of air pollution control in accordance with N.J.A.C. 7:27-22.35 for a major facility, as defined at N.J.A.C. 7:27-22.1, or in accordance with N.J.A.C. 7:27-8.12 for other facilities; and

3. Demonstrates that the electric generating unit meets or exceeds the efficiency thresholds set forth in (b) below.

(b) An electric generating unit shall demonstrate that it meets or exceeds the efficiency thresholds set forth below:

1. If the useful thermal energy output from the electric generating unit is 16 percent or less of its total heat input, the heat rate shall meet one of the following efficiency thresholds:

i. For an EGU less than or equal to 40 megawatts of capacity, a heat rate of 6,900 or less British thermal units (Btu) consumed per kilowatt hour of useful electricity output;

ii. For an EGU greater than 40 megawatts of capacity and less than or equal to 120 megawatts of capacity, a heat rate of 6,550 Btu or less consumed per kilowatt hour of useful electricity output;

iii. For an EGU greater than 120 megawatts of capacity and less than or equal to 240 megawatts of capacity, a heat rate of 6,400 Btu or less consumed per kilowatt hour of useful electricity output; or

iv. For an EGU greater than 240 megawatts of capacity, a heat rate of 5,750 Btu or less consumed per kilowatt hour of useful electricity output.

2. If the useful thermal energy output from the electric generating unit is greater than 16 percent of its total heat input, the overall thermal efficiency of the electric generating unit, considering both useful electricity output and useful thermal energy output, shall be at least 65 percent.

(c) The heat rate shall be determined at conditions representing the continuous power output rating that can be counted upon for 6,000 or more hours of operation per year at ISO conditions without exceeding normal gas turbine wear and maintenance.

(d) The heat input shall be determined at ISO conditions.

## HUMAN SERVICES

### (a)

#### DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

##### Independent Clinic Services

##### Reimbursement Methodology for Ambulatory Surgical Centers

##### Adopted Amendments: N.J.A.C. 10:66-1.5 and 5.1

Proposed: January 7, 2019, at 51 N.J.R. 17(a).

Adopted: May 12, 2019, by Carole Johnson, Commissioner, Department of Human Services.

Filed: May 20, 2019, as R.2019 d.065, **without change**.

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

Agency Control Number: 18-A-05.

Effective Date: June 17, 2019.

Expiration Date: May 3, 2024.

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

A comment was received from John D. Fanburg, Managing Member, Brach-Eichler, LLC, on behalf of the New Jersey Association of Ambulatory Surgery Centers.

COMMENT: The commenter expressed support of the rulemaking. Specifically, they were pleased that the amendments provide that reimbursement for services in an ambulatory surgical center would be linked to the Centers for Medicare and Medicaid Services (CMS) procedure list and expressed support of the elimination of the group classification system formerly used by CMS.

RESPONSE: The Department appreciates the support of the New Jersey Association of Ambulatory Surgery Centers in this matter.

##### Federal Standards Statement

Sections 1902(a)(10) and 1905(a) of the Social Security Act, 42 U.S.C. §§ 1396a(a)(10) and 1396d(a), respectively, allow a state Title XIX program to provide clinic services. Section 1905(a)(9) of the Social Security Act, 42 U.S.C. § 1396d(a)9, provides a definition of clinic services. The Federal statute and regulations allow a state broad latitude in defining clinic services, including the types of clinics the state enrolls into its program, including ambulatory surgical centers.

Title XXI of the Social Security Act allowed states to establish a children's health insurance program for targeted low-income children. Section 2103 of the Social Security Act, 42 U.S.C. § 1397cc, provides broad coverage guidelines for the program. Section 2110 of the Act, 42

U.S.C. § 1397jj, allows clinic services, including ambulatory surgical center services, under the children’s health insurance program.

42 CFR Part 416 contains Federal regulations addressing the provision of ambulatory surgical center services. Specifically, 42 CFR Part 416, Subpart F contains the requirements related to reimbursement for Ambulatory Surgical Centers services.

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

Full text of the adopted amendments follows:

SUBCHAPTER 1. GENERAL PROVISIONS

10:66-1.5 Basis for reimbursement

(a) Except as indicated at (c) through (e) below, reimbursement to independent clinics is in accordance with the maximum fee schedule indicated at N.J.A.C. 10:66-6.2 and is based on the same fees, conditions, and definitions for corresponding services governing the reimbursement of Medicaid/NJ FamilyCare fee-for-service-participating practitioners in “private” (independent) practice. Reimbursement is made directly to the clinic.

1. An independent clinic shall charge for services to all patients, except as provided by legislation. No charge will be made directly to the Medicaid/NJ FamilyCare fee-for-service beneficiary, and the charge to the New Jersey Medicaid/NJ FamilyCare fee-for-service program may not exceed the charge by the clinic for identical services to other groups or individuals in the community.

(b) The HCPCS procedure code system, N.J.A.C. 10:66-6, refers to procedure codes and maximum fee allowances corresponding to Medicaid/NJ FamilyCare fee-for-service-reimbursable services. An independent clinic may claim reimbursement for only those HCPCS procedure codes that correspond to the allowable services included in the clinic’s provider enrollment approval letter, as indicated at N.J.A.C. 10:66-1.3(a).

1. If a HCPCS procedure code(s), approved for use by a specific clinic, is assigned both a specialist and non-specialist maximum fee allowance, the amount of the reimbursement will be based upon the status (specialist or non-specialist) of the individual practitioner who actually provided the billed service. To identify this practitioner, enter the Medicaid/NJ FamilyCare fee-for-service Provider Services Number and the National Provider Identifier in the appropriate section of the claim, as indicated in the Fiscal Agent Billing Supplement, N.J.A.C. 10:66 Appendix.

(c) The basis for reimbursement of services provided in an ambulatory surgical center (ASC) is as follows:

1. (No change.)
  2. For facility reimbursement, surgical procedures performed in an ASC are separated into a classification system as specified by CMS and published in the Federal Register in accordance with 42 CFR 416.167 through 416.179, the Federal regulations governing payment for ASC services.
    - i.ii. (No change.)
  3. (No change.)
- (d)-(e) (No change.)

SUBCHAPTER 5. AMBULATORY SURGICAL CENTER (ASC)

10:66-5.1 Covered services

(a) Medicaid and NJ FamilyCare fee-for-service covered procedures in an ambulatory surgical center (ASC) are those surgical and medical procedures that appear at 42 CFR 416.166, the Federal regulations governing ASC services.

(b) (No change.)

(c) For reimbursement information for ASC services, see N.J.A.C. 10:66-1.5.

**BANKING AND INSURANCE**

(a)

**DIVISION OF INSURANCE**

**Notice of Readoption  
Captive Insurance**

**Readoption: N.J.A.C. 11:28**

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, and 17:47B-1et seq.

Authorized By: Marlene Caride, Commissioner, Department of Banking and Insurance.

Effective Date: April 18, 2019.

Expiration Date: April 18, 2026.

**Take notice** that pursuant to N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 11:28 were scheduled to expire on May 21, 2019. N.J.A.C. 11:28 establishes the admission procedures and financial reporting requirements that are necessary to implement N.J.S.A. 17:47B-1 et seq., which governs Captive Insurance Companies.

The Department believes that the readoption of these rules will continue to provide a regulatory framework by which a company may form or redomesticate a captive insurance company in New Jersey. Additionally, the readoption of these rules helps the Department ensure the registration of Captive Managers, Actuaries, and Certified Public Accountants employed by Captive Insurance Companies.

The Department has reviewed these rules and has determined that the chapter remains necessary, reasonable, proper, efficient, understandable, and responsive to the purposes for which it was originally promulgated. Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(1), N.J.A.C. 11:28 is readopted without change and shall continue in effect for a seven-year period.

**LABOR AND WORKFORCE DEVELOPMENT**

(b)

**DIVISION OF WAGE AND HOUR COMPLIANCE**

**Notice of Administrative Change  
Prevailing Wages for Public Works  
Scope—Chapter Application**

**N.J.A.C. 12:60-1.4**

**Take notice** that the Department of Labor and Workforce Development has requested, and the Office of Administrative Law has agreed to permit, an administrative change to N.J.A.C. 12:60-1.4(b). In pertinent part, that subsection states that N.J.A.C. 12:60 “shall apply to every contract in excess of \$15,444 awarded in whole or in part by a municipal public body and to every subcontract pursuant to said contract.” Pursuant to N.J.S.A. 34:11-56.26(11)(a), the latter amount “shall be adjusted on July 1 every five years in direct proportion to the rise or fall in the average Consumer Price Index for Urban Wage Earners and Clerical Workers for the New York metropolitan and the Philadelphia metropolitan regions as reported by the United States Department of Labor during the last full calendar year preceding the date upon which the adjustment is made.” The percent increase in the average Consumer Price Index for the specified regions over the previous five years was 5.3 percent. Therefore, pursuant to N.J.S.A. 34:11-56.26(11)(a), the \$15,444 prevailing wage contract threshold amount for public works paid for in whole or in part by a municipal public body must be changed to \$16,263 effective July 1, 2019. This notice of administrative change is published in accordance with N.J.A.C. 1:30-2.7.

**Full text** of the changed rule follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):