



NEW JERSEY LAW REVISION COMMISSION

Draft Tentative Report to Eliminate Duplicative Definitions Sections of the Health and Vital Statistics Statute in Title 26

December 6, 2021

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S. 1:12A-8*.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **February 14, 2022**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

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Project Summary¹

In July 2017, the Commission authorized a project to consolidate two duplicative definition sections contained in Title 26 (alternatively, the “Health Act”).² The first statute in the Health Act, N.J.S. 26:1-1, defines the same six groups of terms as the statute immediately following it, N.J.S. 26:1A-1, using almost identical language.³

After reviewing the large number of defined terms in the Health Act, Staff presented an Update Memorandum to the Commission, which authorized an expansion of the project to “examine whether it would be beneficial to further consolidate the definition sections” in Title 26.⁴ Staff then identified terms that are defined repeatedly and consistently, and are used throughout the Health Act, to be incorporated into a general definition section.

With the goal of consolidating duplicative definitions into an easily identifiable and broadly applicable definition section at the beginning of the Health Act, the Commission recommends combining N.J.S. 26:1-1 and N.J.S. 26:1A-1 by harmonizing the definitions and eliminating the older statute, N.J.S. 26:1-1.⁵ The Commission also recommends deleting definitions contained in other areas of the Health Act that duplicate the definitions included in the modified general definition section in N.J.S. 26:1A-1.

Background

New Jersey established the State Board of Health in 1877 to “take cognizance of the interest of health and life among the citizens of this state.”⁶ In 1915, the Board’s powers were vested in the newly formed New Jersey Department of Health.⁷ After the enactment of a revised New Jersey Constitution in 1947, the Legislature introduced N.J.S. 26:1A-1 which defined the same terms as the act establishing the Department of Health.⁸ In 1950, both N.J.S. 26:1-1 and N.J.S. 26A:1-1 were amended “to change the terminology of the Department of Health.”⁹ In 1951, the statutes were again amended to add their present language.¹⁰

¹ Preliminary work on this project was conducted by: Christopher Mrakovcic, a former Legislative Law Clerk; Bishoy Shokralla, a former Legal Intern; and Joseph Pistritto, a former Legislative Fellow during their respective tenures with the New Jersey Law Rev. Comm’n.

² Title 26 (“Health and Vital Statistics”) (N.J.S. 26:1-1, et seq.)

³ N.J.S. 26:1-1 defines the terms (1) “State department,” “department of health,” “department,” (2) “Commissioner,” “Director,” (3) “Council,” (4) “Division,” (5) “Division director,” and (6) “Local board,” “local board of health.” N.J.S. 26:1A-1 defines all of the same terms, excluding “Director.”

⁴ N.J. Law Revision Comm’n, *Minutes NJLRC Meeting*, *1-2 Jan. 17, 2019, www.njlrc.org (last visited Dec. 03, 2021); N.J. Law Revision Comm’n, Memorandum Regarding Duplicative Definitions of the Public Health Statute, *3 (Nov. 5, 2018), www.njlrc.org (last visited Dec. 3, 2021) [hereinafter N.J. Law Rev. Comm’n. Nov. 2018 Memorandum].

⁵ N.J.S. 26:1-1 was enacted as L.1915, c. 288, p. 517 [1924 Suppl. § 89-1a et seq.], and all of the other sections originally contained in that Chapter were subsequently repealed, and N.J.S. 26:1A-1 was added as L.1947, c. 177, § 1, eff. July 1, 1947. Amended by L.1950, c. 29, § 1, eff. April 11, 1950; L.1951, c. 69, § 66.

⁶ N.J. Dept. of State, <https://nj.gov/state/archives/cathealth.html> (last visited Dec. 2, 2021).

⁷ *Id.*

⁸ L.1947, c. 177, § 1, eff. July 1, 1947.

⁹ The term “bureau” was changed to “division.” L.1950, c.29, §§ 1 & 7, eff. April 11, 1950.

¹⁰ L.1951, c. 69, §§ 66 – 67, eff. May 14, 1951.

Over the more than sixty years since these sections were last amended, hundreds of defined terms have been added to the Health Act.¹¹ Some of these are also defined in N.J.S. 26:1-1 and N.J.S. 26:1A-1; some are defined several times, and in some cases, in different ways, within Title 26 itself; and some are defined just once or twice in the entire Health Act.¹²

Analysis¹³

- *Consolidation of N.J.S. 26:1-1 and N.J.S. 26:1A-1*

As this project was originally proposed, the Commission sought to consolidate the existing definitions set forth in N.J.S. 26:1-1 and N.J.S. 26:1A-1 into a single definition section. Five terms are defined identically by these statutes,¹⁴ but the terms “local board” (or “local board of health”) are described in significantly more detail in N.J.S. 26:1-1.

Among the 1951 amendments to the Health Act, the Legislature incorporated the concept of “consolidated” and “county” boards of health into the definitions of “local board” in both N.J.S. 26:1-1 and N.J.S. 26:1A-1.¹⁵ The Sponsors’ Statement to the bill explained that, along with other amendments to Health Act, the “purpose of [the] bill is to empower municipalities to join together in creating consolidated local health districts.”¹⁶

Although the Sponsors’ Statement does not indicate why the definition sections were amended differently, the definition of “local board” in N.J.S. 26:1A-1 was amended to explain when consolidated or county local boards of health would fall within the definition. The definition in N.J.S. 26:1A-1 simply states that the “local board” or “local board of health . . . includes any consolidated local board of health or county local board of health created and established pursuant to law.”¹⁷

Because there are no other mentions of “consolidated” boards of health within Health Act, and county boards of health are defined elsewhere,¹⁸ the detailed explanation in N.J.S. 26:1-1 does not appear to be necessary to fully define “local board.” Therefore, the Commission recommends modifying N.J.S. 26:1A-1 to include the consolidated definition section, and deleting N.J.S. 26:1-1 entirely.

- *Defined Terms Included in the Modified Definition Section in N.J.S. 26:1A-1*

To provide a comprehensive and useful definition section in N.J.S. 26:1A-1, the various defined terms in the Health Act were assessed to determine which duplicative definitions appeared

¹¹ There are almost 140 statutes titled “definitions” or “defined terms” in Title 26.

¹² A complete list of the 670 defined terms, and the number of times they are defined, compiled by Christopher Mrakovcic, former Leg. Law Clerk, accompanies this Report as Fig.1.

¹³ Given the large number of statutes affected by the proposed modifications, the relevant statutory text has been incorporated into the body of this Report, rather than set forth in a separate section.

¹⁴ In N.J.S. 26:1-1, the terms “Commissioner” and “Director” are interchangeable but the term “Director” is not included in N.J.S. 26:1A-1.

¹⁵ L.1951, c.69, §§ 66 – 67, eff. May 14, 1951.

¹⁶ Sponsors’ Statement to A.B. 1, later codified at L.1951, c.69, §§ 66 – 67, eff. May 14, 1951.

¹⁷ N.J.S. 26:1A-1.

¹⁸ N.J.S. 26:3A2-2; N.J.S. 26:3A2-23.

to be appropriate for consolidation and which seemed as though they can be eliminated. In addition to the original defined terms in N.J.S. 26:1-1 and N.J.S. 26:1A-1, which make up the first type of terms contained in the proposed new definition section, two more discrete types of defined terms were identified as potentially appropriate additions to a consolidated definition section.

The second type includes terms defined repeatedly and consistently within the Health Act but not appearing in the initial definition sections contained in N.J.S. 26:1-1 and N.J.S. 26:1A-1. Since the definitions of these terms are substantially identical, it seems that these defined terms can be relocated to the modified general definition section and the duplicative occurrences deleted.

The last type are terms that are repeatedly, but not always consistently, defined. To the extent that the differing definitions could be merged, a consolidated definition was included in the modified general definition section. Definitions that were incompatible with a consolidated definition were left untouched because N.J.S. 26:1A-1 directs that the definitions therein are applicable “unless otherwise specifically indicated.”

Type One: Terms Contained in N.J.S. 26:1-1 and N.J.S. 26:1A-1

There are six terms defined in N.J.S. 26:1-1 and N.J.S. 26:1A-1. Excluding these initial definition sections, the term “department” (or “State department” or “department of health”) is defined 41 times.¹⁹ The Commission recommends that all 41 occurrences of this defined term be eliminated from Title 26, since these terms are consistently defined wherever they now appear within the Health Act.

Similarly, the term “Commissioner” is defined 56 times in the Health Act.²⁰ Six of these definitions also include the Commissioner’s “designee” or “authorized deputies, representatives, agents or employees.”²¹ With respect to the 50 definitions that are identical to that found in N.J.S. 26:1A-1, the Commission recommends striking them from the Health Act.

The Commission makes no recommendation regarding the six alternative definitions of “commissioner.” Striking the definitions may inappropriately limit the power of the Commissioner’s agents and designees, and alternatively, modifying the consolidated definition in N.J.S. 26:1A-1 to include the Commissioner’s designees or agents could encroach upon powers specifically delegated to the Commissioner of Health.

The term “local board of health” is defined once.²² The definition is not identical to that found in N.J.S. 26:1A-1, but adheres closely enough to fall within the general definition therein. Therefore, the Commission recommends deleting the duplicative definition in the Health Act. The three remaining terms (“council,” “division,” and “division director”) are defined multiple times

¹⁹ These three terms are consistently defined as “the State Department of Health” or “the Department of Health.”

²⁰ The term “Commissioner” is defined as “the State Commissioner of Health,” “the Commissioner of Health,” “Commissioner of the Department of Health” or “the Commissioner of the State Department of Health.”

²¹ N.J.S. 26:2A-3(j); N.J.S. 26:2F-3(b); N.J.S. 26:2G-32(a); N.J.S. 26:3A2-3j; N.J.S. 26:12-3d; N.J.S. 26:13-2.

²² N.J.S. 26:3-69.1(1).

within the Health Act. However, each instance refers specifically to a different council, division, and division director, and therefore, the Commission recommends these terms remain unmodified.

Type Two: Consistently Defined Terms

The goal of creating a consolidated definition section of terms used consistently throughout the Health Act involved identifying terms used in multiple sections of the Health Act, that have a common definition which can be included in the modified definition section in N.J.S. 26:1A-1.

There are a small number of terms that meet these criteria. These terms include: “adult,” “Alzheimer’s Disease and related disorders,” “birthing facility,” “contagious disease,” “infectious disease,” “local health agency,” “local registrar,” “long-term care facility,”²³ “Medicaid,” “Medicare,” “state,” “State Registrar,” “substance use disorder,” “vital records” and “vital statistics.”

Among this group of terms, the multiple definitions use identical language,²⁴ and all appear in more than one chapter within the Health Act. The Commission recommends that these terms are added to the modified definition section in N.J.S. 26:1A-1, and all duplicative definitions be deleted.

Type Three: Inconsistently Defined Terms

The last type of defined term included in the modified definition section in N.J.S. 26:1A-1 are defined inconsistently but may still be amenable to consolidation. The terms “covered person,” “hospital,” and “person,” are defined in a manner that seems to be similar enough to formulate an accurate general definition and delete almost all duplicative definitions throughout the Health Act.

The term “covered person” is defined four times in Title 26.²⁵ The only difference between the defined terms is that one is specific to dental plans.²⁶ Since that definition is included in a statute devoted entirely to dental-plan-related definitions, it seems appropriate to leave it intact.²⁷ Consequently, the Commission recommends relocating the term “covered person” to N.J.S. 26:1A-1 and eliminating three of the four definitions of the term from the Health Act.

²³ N.J.S. 26:2H-12.87 defines the term “long-term care facility.” This statute was recently amended to exclude all facilities except nursing homes. Staff does not recommend that this definition section be either consolidated or eliminated. *See* S.B. 2790 (identical to A.B. 4430), 219th Leg. (2020)), later codified as L.2021, c. 190, § 1, eff. Aug. 5, 2021.

²⁴ There are some slight variations in wording, but none that affect the substantive meaning of the definitions.

²⁵ N.J.S. 26:2S-2; N.J.S. 26:2S-26; N.J.S. 26:26-29; N.J.S. 26:2SS-3.

²⁶ N.J.S. 26:2S-26 (“a person on whose behalf a carrier offering a dental plan is obligated to pay benefits for or provide dental services pursuant to the plan”); *compare* N.J.S. 26:2S-2 (“a person on whose behalf a carrier offering the plan is obligated to pay benefits or provide services pursuant to the health benefits plan”).

²⁷ N.J.S. 26:2S-26 (“Definitions relating to dental plans”) contains three additional terms relating specifically to dental insurance coverage.

“Hospital” is defined four times in the Health Act, with one definition diverging significantly from the other three, which all appear in the same chapter.²⁸ Consequently, the Commission recommends that the three consistent definitions of “hospital” be eliminated from Title 26, and a consolidated definition relocated to the definition section in N.J.S. 26:1A-1.

Although the Legislature provided a general definition for the term “person” in N.J.S. 1:1-2, the Health Act contains five different definitions of the term.²⁹ Three definitions contain non-exclusive and similar lists of qualifying entities, while the other two provide more expansive, but discrete lists.³⁰ The Commission recommends that the three open-ended definitions be consolidated and included in the modified general definition section. The Commission makes no recommendation regarding the other two definitions, so as not to disturb any legislative intent to limit the scope of the definition of “person” in certain circumstances.

The Commission recommends that a total of eighteen new terms be added to the modified consolidated definition section in N.J.S. 26:1A-1,³¹ and 159 instances of duplicative definitions be eliminated from the Health Act.

Defined Terms Excluded from the Modified Definition Section in N.J.S. 26:1A-1

The terms that are not included in the modified definition section in N.J.S. 26:1A-1, can be divided into three categories. The vast majority of defined terms in the Health Act fell within the first category and were used only within statutory sections addressed to a specific topic. These terms are generally defined only once or twice, and tend to be unique, in that they are proper nouns, medical or scientific terms, or irrelevant to other sections of the Health Act.

The second category includes terms with broad applicability that are defined many times in the Health Act. These terms were excluded because almost all of the definitions were either partially or wholly inconsistent with one another. The inconsistency between these defined terms most often arose from the fact that the definitions were tailored to address a specific issue.

The third, and final, category includes a small number of terms that are consistently defined, but only used within a single chapter or article. The terms in this category do not appear to be suitable for a general definition section, but potentially, a consolidated definition section could be created within a single chapter of the Act, and duplicative definitions could be eliminated, within that chapter. Without further expanding the scope of this project, it is unclear whether this would be beneficial or unnecessarily complicated.³²

Type One: Unique Terms

²⁸ N.J.S. 2H-5.25; N.J.S. 2H-7.5; N.J.S. 26:2H-18.52; N.J.S. 26:6-78. The three statutes in Chapter 2H define “hospital” similarly as “a general acute care hospital licensed pursuant to P.L.1971, c. 136 (C.26:2H-1 et seq.),” while the definition in the statute Chapter 6 includes a detailed list of attributes.

²⁹ N.J.S. 26:2A-3(b); N.J.S. 2A-17; N.J.S. 26:2A-24; N.J.S. 26:2C-2; N.J.S. 26:2J-2g.

³⁰ N.J.S. 26:2A-3(b), N.J.S. 2A-17 and N.J.S. 26:2J-2g contain open-ended language (“or other similar entity,” “including but not limited to”), while N.J.S. 26:2A-24 and N.J.S. 26:2C-2 limit “person” to a finite list of entities.

³¹ This count includes the addition of “board of health” to the original list of terms contained in N.J.S. 26:1A-1.

³² An example of this modification is set forth below for demonstrative purposes only.

The Health Act contains hundreds of defined terms that have specific relevance, and the majority of these terms are defined only once.³³ Generally, these terms appeared in just one chapter, or were complicated scientific and medical terms or proper names of programs, organizations, and officials.³⁴ Consolidating these terms in a general definition section would render it extremely unwieldy and increase the inconvenience of looking up the meaning of unique, complicated, or unfamiliar terms.

Type Two: Inconsistently Defined Terms

Another large category are terms defined so inconsistently that creating a consolidated definition is nearly impossible. Despite being defined in many different places within the Health Act, terms like “health care professional,” “health care provider,” and “health care facility,” differ simply because they are defined in the context of a specific health issue.³⁵

For instance, a “health care provider” is defined in Chapter 2 and Chapter 2N as a “health care professional” and “health care facility” with certain licensing, but the definition in Chapter 2 is limited to those that “provide health care services to newborn infants,”³⁶ while the definition in Chapter 2N refers only to those “that administer[] vaccinations.”³⁷ Similar incompatibilities exist in the definitions for other terms that might otherwise seem to lend themselves to a general definition section, like “carrier” or “patient.”

Other terms, although they are not defined nearly as often, simply have definitions that cannot readily be reconciled. For example, a “minor” in Chapter 5C is a person under twelve³⁸ but is a person under eighteen in Chapter 6.³⁹ Similarly, a “child” is defined as ranging in age from one to five years old,⁴⁰ to under nineteen,⁴¹ to under twenty-two,⁴² depending on its location in the Health Act.

Type Three: Contained Terms

A final, and much smaller category of terms includes those that have identical definitions, but do not appear outside the chapter in which they are first defined. In this category are terms like

³³ See Fig. 1, attached hereto.

³⁴ For example, “‘Radiation accident’ means any occurrence or event during the operation and maintenance of any nuclear facility or during the transportation of radioactive material, which results in the release of unnecessary radiation, as defined in section 1 of P.L.1958, c. 116 (C. 26:2D-1),” as defined in N.J.S. 26:2d-39e. In N.J.S. 26:2-90, the term “‘Von Willebrand disease’ means a bleeding tendency resulting from a genetically determined, hereditarily determined, or acquired deficiency of the von Willebrand factor in the blood.”

³⁵ Cumulatively, these three terms are defined over 20 times in the Health Act.

³⁶ N.J.S. 26:2-111.1.

³⁷ N.J.S. 26:2N-8.

³⁸ N.J.S. 26:5C-5.

³⁹ N.J.S. 26:6-78.

⁴⁰ N.J.S. 26: 2-131.

⁴¹ N.J.S. 26:2H-143.

⁴² N.J.S. 26:2-96a & -149b.

“First Responder”⁴³ and “marihuana,”⁴⁴ which appear to have standardized definitions but are not used outside of Chapter 2K or Chapter 2, respectively.

Legislation

There are several pending bills that address various statutes in the Health Act. None of these bills address the duplicative definition sections contained in the Act. There are three pending bills that affect the definition sections contained in N.J.S. 26:2B-8 and N.J.S. 26:2G-22.⁴⁵ Additionally, there are two bills⁴⁶ that propose to repeal various subsections in Chapter 2K⁴⁷ and one bill that proposes to repeal the entirety of Chapter 16.⁴⁸

Conclusion

Initially, this project focused solely on consolidating two duplicative definition sections at N.J.S. 26:1-1 and 26:1-1A in the Health Act. In order to achieve the goal of providing an easily identifiable and broadly applicable definition section at the beginning of the Health Act, the Commission recommends that the definition sections in N.J.S. 26:1-1 and 26:1-1A be consolidated at N.J.S. 26:1A-1, with eighteen additional defined terms included and 159 instances of duplicative definitions deleted from other parts of the Health Act.

The Appendix to this Report contains the relevant text of each statute in which the above-described terms appear along with the proposed modifications which create a consolidated definition section and eliminate apparently duplicative definitions within the Health Act.

⁴³ N.J.S. 26:2K-39 & -66 (“means a police officer, firefighter or other person who has been trained to provide emergency medical first response services in a program recognized by the commissioner.”)

⁴⁴ N.J.S. 26:2-81 – 82 (“shall not mean hemp or a hemp product cultivated, handled, processed, transported and sold pursuant to the “New Jersey Hemp Farming Act” P.L.2019, c. 238 (C.4:28-6 et al.)”)

⁴⁵ A.B. 4084, 219th Leg. (2020) was introduced May 7, 2020, and S.B. 2079, 219th Leg. (2020) was introduced Mar. 16, 2020. S.B. 2188, 219th Leg. (2020) (identical to A.B. 2158) was also introduced Mar. 16, 2020. These bills propose replacing the current definition of “Commissioner [of Health]” with “Commissioner of Human Services,” and “Department [of Health]” with “Department of Human Services.”

⁴⁶ S.B. 617, 219th Leg. (2020) (identical to: A.B. 1885) was introduced Jan. 14, 2020, as were S.B. 505, 219th Leg. (2020) and A.B. 1840, 219th Leg. (2020). Although the bills each propose repealing different statutes in Chapter 2K, the remaining statutes are not affected by the bills’ other proposed amendments.

⁴⁷ The statutory sections affected by these bills are N.J.S. 26:2K-7, -21, -35, -39, -47.1, -49, and -55.

⁴⁸ The statutory section affected by this bill is N.J.S. 26:16-3.