

**CHAPTER 46C**

**WAITING LIST PROCEDURES**

**Authority**

N.J.S.A. 30:4-25.6.

**Source and Effective Date**

R.2001 d.148, effective April 10, 2001.  
See: 33 N.J.R. 179(a), 33 N.J.R. 1378(a).

**Executive Order No. 66(1978) Expiration Date**

Chapter 46C, Waiting List Procedures, expires on April 10, 2006.

**Chapter Historical Note**

Chapter 46C, Waiting List Procedures, was adopted by R.1995 d.197, effective April 17, 1995. See: 26 N.J.R. 1752(a), 26 N.J.R. 2756(a), 27 N.J.R. 1652(a).

Pursuant to Executive Order No. 66(1978), Chapter 46C, Waiting List Procedures, was readopted as R.1996 d.219, effective April 15, 1996. See: 28 N.J.R. 1177(a), 28 N.J.R. 2614(a).

Pursuant to Executive Order No. 66(1978), Chapter 46C, Waiting List Procedures, was readopted as R.2001 d.148, effective April 10, 2001. See: Source and Effective Date.

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**SUBCHAPTER 1. GENERAL PROVISIONS**

**10:46C-1.1 Purpose**

(a) The purpose of this subchapter is to establish criteria and procedures for allocating limited residential and day program resources based on the relative needs of the individuals waiting for community services. In accordance with the Developmentally Disabled Rights Act (N.J.S.A. 30:6B-1 et seq.), such services shall be designed to maximize the developmental potential of the individual in a manner least restrictive of personal liberty.

(b) The availability of such services shall be limited to the Division's funding in a given fiscal year. The basis of this subchapter is to establish a means to prioritize placement needs when there are insufficient funds to provide the most appropriate residential or day program. The rules represent an administrative process for the allocation of scarce resources among many individuals with similar needs and circumstances.

(c) The waiting list assignment shall indicate only the priority need for a day program or a residential placement. The assignment shall not reflect the specific type of service needed. The individual's need for placement changes over the course of the individual's life. The intent of the subchapter is not to establish specific services to be provided but to reflect only a general service need. Waiting list categories are general groupings based upon the level of priority. No specific numbered order is contained in any category. However, the date that the individual is assigned to a waiting list category shall be recorded.

Amended by R.2001 d.471, effective January 7, 2002.  
See: 33 N.J.R. 2438(a), 34 N.J.R. 277(a).

In (c), substituted "priority" for "urgency" throughout.

**10:46C-1.2 Scope**

This subchapter applies to all adult individuals who are currently waiting for residential and day placement in community-based settings or who may request such services in the future. Specific rules which apply to children are set forth at N.J.A.C. 10:46C-1.9.

Amended by R.1996 d.219, effective May 20, 1996.  
See: 28 N.J.R. 1177(a), 28 N.J.R. 2614(a).

Amended provision relating to children.

**10:46C-1.3 Definitions**

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

"Behavioral supports" means those strategies contained in a written plan to address a difficult behavior. Behavioral supports include, but are not limited to, behavior modification techniques, out-of-home respite due to a difficult behavior and periodic psychiatric care.

"Caregiver" means an individual who is not a parent but is another family member or a family friend.

"Community based alternate living arrangement" means a community residence as defined in N.J.A.C. 10:44A or a community care home as defined in N.J.A.C. 10:44B.

"Community Services" means that component of the Division which provides intake, referral and an array of community-based day and residential services. Community Services regional offices serve four geographical areas of the

State which are: northern, upper central, lower central and southern.

“Competitively employed” means paid work on a full time or part time basis in an integrated setting for which the individual is compensated in compliance with the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq.

“Day program” means a Division funded service which addresses an individual’s need for daytime activities as described in the individual’s IHP.

“Department” means the Department of Human Services.

“Division” means the Division of Developmental Disabilities.

“Emergency day program placement” means the individual is placed in a day program which provides safety and supervision to the individual while in attendance but is not necessarily designed to meet the goals in the person’s Individual Habilitation Plan.

“Emergency placement” means that placement which is made when the individual is homeless or the Division cannot provide adequate alternate services in the existing situation to care for the individual safely and the Division has determined that there is no long term placement available.

“Generic geographical location” means a general location, such as urban, suburban or rural area.

“Guardian” means a person or agency appointed by a court of competent jurisdiction or otherwise legally authorized and responsible to act on behalf of a minor or incompetent adult to assure provision for the health, safety and welfare of the individual and to protect his or her rights. For the purposes of this subchapter, the term “guardian” shall also apply to a proposed guardian where a guardianship action is pending.

“In-home supports” means the individual may choose to have the Division provide services in his or her home as an alternative to accepting a residential placement.

“Individual Habilitation Plan (IHP)” means a written plan of intervention and action that is developed by the interdisciplinary team. It specifies both the prioritized goals and objectives being pursued by each individual and the steps being taken to achieve them. It may identify a continuum of skill development that outline progressive steps and the anticipated outcomes of services. The IHP is a single plan that encompasses all relevant components, such as an education plan, a program plan, a rehabilitation plan, a treatment plan and a health care plan. The complexity of the IHP will vary according to the needs, capabilities and desires of the person. For an individual who has been determined by an Interdisciplinary Team to require active treatment, the IHP shall address all needs identified. For an individual who makes only specific service requests, the IHP shall be a service plan which addresses only those specific requests.

“Intake team” means at least two staff, one of whom is an intake worker, who are responsible to determine if the eligibility criteria contained in N.J.A.C. 10:46 have been met.

“Interdisciplinary Team (IDT)” means an individually constituted group responsible for the development of a single, integrated IHP. The team shall consist of the individual receiving services, the individual’s parent or family member (if the adult desires that the parent or family member be present), legal guardian, those persons who work most directly with the individual served and professionals and representatives of service areas relevant to the identification of the individual’s needs and the design and evaluation of programs to meet those needs.

“Long term placement” means placement which is anticipated to be of one year or longer duration.

“Medical needs” means the individual has a documented chronic or acute medical condition which requires regular care to be provided to him or her.

“Physical support” means the individual requires daily, direct assistance in eating, ambulation, transferring between locations or toileting. Sleep disturbances which require the person to be directly supervised while awake at night would also be considered a physical support.

“Placement” means any action taken by the Division to address an individual’s need for residential services or day program, which allows the person to be removed from the waiting list for residential services or day program.

“Placement review team (PRT)” means a group of Division employees, family members and community volunteers who review requests for assignment to the urgent category.

“Psychiatric care” means the person has a chronic need for periodic in-patient care in a psychiatric facility.

“Self-determination process” means a service delivery system which allows an individual with developmental disabilities, in conjunction with his or her legal guardian, if any, family and selected friends to identify appropriate services and supports and determine how an individual budget, as well as personal, family and community resources can be used to develop a support plan.

“Specific geographic region” means an identified city, suburb, municipality, county or region of the State.

“Supported employment” means employment in an integrated work setting for individuals with the most significant disabilities for whom competitive employment has not been available in the past, and who, due to the nature and severity of their disability(ies), require ongoing support to maintain employment.

“Waiting list” means a roster of eligible individuals with developmental disabilities waiting for community-based services who are not currently receiving residential services, are awaiting residential or day services while in placement from another funding source.

“Waiting list initiative” means new funding provided in the Division’s budget specifically for the purpose of serving persons from the priority waiting list.

Amended by R.1996 d.219, effective May 20, 1996.

See: 28 N.J.R. 1177(a), 28 N.J.R. 2614(a).

Added “Caregiver”, “Emergency placement”, “Generic geographical location”, “Guardian”, “Long term placement”, “Placement” and “Specific geographic region”; amended “Placement review team” and “Waiting list”.

Amended by R.1998 d.479, effective September 21, 1998.

See: 30 N.J.R. 1012(a), 30 N.J.R. 1255(a), 30 N.J.R. 3518(a).

Added “Waiting list initiative”.

Amended by R.2000 d.110, effective March 20, 2000.

See: 31 N.J.R. 1302(a), 32 N.J.R. 1021(a).

Inserted “Competitively employed”, “Day program”, “Emergency day program placement”, and “Supported employment” definitions. Amended by R.2001 d.471, effective January 7, 2002.

See: 33 N.J.R. 2438(a), 34 N.J.R. 277(a).

Inserted “Behavioral supports”, “In-home supports”, “Medical needs”, “Physical support”, “Psychiatric care” and “Self-determination process”; amended “Waiting list” and “Waiting list initiative”.

#### 10:46C-1.4 Waiting list assignment for residential services

(a) At the time of eligibility, the applicant shall be informed of the residential and day program waiting list. The waiting list category shall be specified at the time the individual is found eligible for functional services if the individual or legal guardian requests waiting list assignment at that time.

(b) If the individual does not request waiting list assignment at the time he or she is found eligible, he or she may request an assignment at any time. The waiting list assignment or lack of a waiting list assignment and desire to be added to the waiting list shall be reassessed no less than annually.

(c) If an individual is over 18 years of age and is competent and expresses a desire to leave his or her current living arrangement, the Division shall evaluate the individual against the criteria contained in this chapter. Unless the individual meets the priority criteria, he or she shall be assigned to the general waiting list.

(d) The waiting list system shall consist of three categories: priority, priority deferred and general waiting list, as follows:

1. The priority category will be assigned when the individual is in need of a placement because he or she is determined to be at significant risk.

i. Assignment to the priority category may be requested by the individual, his or her legal guardian, or a caregiver. The PRT shall determine if the criteria for

assignment to this category, as provided in (d)iii below have been met;

ii. The priority category may be assigned only when the individual or legal guardian would accept his or her preferred service if it were offered. In the case of children, the requirements of N.J.A.C. 10:46C-1.9 shall also apply;

iii. Satisfaction of one or more of the following criteria shall create a presumption that the individual or family is at risk:

(1) Both of the birth or adoptive parents are 60 years or older;

(2) Parents between 55 and 60 may be assigned to the priority waiting list if the Placement Review Team believes that the individual requires psychiatric care, physical supports or behavioral supports.

(3) An individual living with a person other than the birth or adoptive parents who is providing care voluntarily and without pay and the voluntary caregiver indicates he or she can no longer care for the individual.

(4) Where the parent or guardian is under age 55, satisfaction of one or more of the following criteria shall create a presumption that the individual or family is at risk. The individual may be assigned to the priority category if:

(A) There is a clear risk of abuse, neglect or exploitation;

(B) There is a clear risk to the individual’s health and safety;

(C) There is a single parent as the head of household who requires a minimum of 40 hours of specialized or generic supports from the Division each month in order to keep a full time job;

(D) There is a single parent as the head of household who is the primary caregiver to more than one person with a disability and those persons have significant direct care needs, that is, feeding, bathing and/or toileting;

(E) The individual’s behavior(s) present a risk to self or others which cannot be effectively managed by the parents even with generic or specialized supports provided by the Division; or

(F) There are physical care needs such as lifting or bathing or medical needs which cannot be managed by the parents even with generic specialized supports provided by the Division.

2. The “Priority Deferred” category may be assigned by the Division if the person is on the priority waiting list and an offer of placement is made and declined, or if the person is on the priority waiting list and agrees to accept

in-home supports in lieu of a residential placement. The Division shall announce the maximum amount available to an individual for in-home supports annually in the New Jersey Register at the beginning of each fiscal year.

i. The individual assigned to the priority deferred category shall retain his or her original date of assignment to the priority category;

ii. The individual may request restoration to the priority category at any time provided that he or she would be willing to accept an offer of residential placement.

iii. Once a person is added to the priority category, he or she shall have their original date restored and he or she shall be included in the next available initiative unless an emergency placement is required.

iv. The Division will send an annual form letter requesting an update of the waiting list status. The individual or his or her legal guardian shall be responsible to return the completed form to the Division.

v. The individual or his or her legal guardian may also notify the Division in writing when he or she is willing to accept a residential placement and wishes to be restored to the priority category.

3. When requested by an individual or his or her legal guardian or caregiver, or if the individual does not meet the criteria for assignment to the priority category, assignment to the general waiting list shall be made by the Division if placement is not desired or needed now but is anticipated at some time in the future.

(e) In the event that two or more individuals have the same assignment date to the priority category of the waiting list, the person with the earlier date shall have the higher priority, as follows:

1. The first criteria used to break the tie shall be the original (initial) date of assignment of the person to any category of the waiting list.

2. If more than one person has the same original date of assignment to the waiting list, the second criteria used to break the tie shall be the date the person was determined eligible for functional services.

Amended by R.1996 d.219, effective May 20, 1996.  
See: 28 N.J.R. 1177(a), 28 N.J.R. 2614(a).

Rewrote section.

Amended by R.1998 d.479, effective September 21, 1998.  
See: 30 N.J.R. 1012(a), 30 N.J.R. 1255(a), 30 N.J.R. 3518(a).

Added (e).

Amended by R.2000 d.110, effective March 20, 2000.  
See: 31 N.J.R. 1302(a), 32 N.J.R. 1021(a).

Amended by R.2001 d.471, effective January 7, 2002.  
See: 33 N.J.R. 2438(a), 34 N.J.R. 277(a).

Rewrote the section.

Public Notice: Available funding for in-home supports.  
See: 34 N.J.R. 608(a).

#### 10:46C-1.5 Initial notification for residential services

(a) The initial waiting list assignment will be made by the person's Intake Team if the individual is requesting placement at the time of initial application. When an individual is assigned to a category or when a person is reviewed for a change in the category, the results of the review will be forwarded in writing by Division staff to the individual, if competent, or his or her legal guardian within 30 days of the determination.

(b) The category shall be included in the person's IHP.

(c) At the time of the determination of eligibility and assignment to a waiting list, the Division shall identify the individual's preferences and the environmental support needed.

(d) The individual and/or his or her legal guardian, with input from the family where desired by the individual, shall determine the preference for services.

(e) Wherever possible, there should be a consensus among the individual, guardian, and the caregiver as to the preference. Division staff shall have no role in deciding preference except to advocate for the wishes of the individual. However, when there is no consensus reached, the Division shall note that there is a disagreement.

(f) Where no consensus is reached and the individual can express a clear and reasonable preference, the wishes of the individual shall be the preference recorded by the Division.

(g) If the individual cannot express a clear preference, the wishes of his or her legal guardian shall be recorded by the Division.

(h) Where there is no guardian appointed or pending, the wishes of the caregiver shall be recorded by the Division.

(i) Where the Bureau of Guardianship Services (BGS) serves as guardian to the individual, the requirements of N.J.A.C. 10:45 shall be followed concerning the preferences of the individual and/or family.

(j) Preferences shall be prioritized and address the following:

1. Where the individual wishes to live (that is, geographic location, either specific or generic);

2. With whom the individual wishes to live (that is, alone, with one other person, with several others). The individual may identify specific individuals; and

3. How geographically close to family and friends the individual wishes to live.

(k) The environmental support needs of the individual shall be identified by the individual, guardian, family (where desired by the individual), voluntary caregiver and Division staff.

(l) Consensus as to the environmental support needed is most desirable, though not required.

(m) Environmental supports include, but are not limited to:

1. Barrier free access;
2. Assistance with ambulating;
3. Visual supports;
4. Auditory supports;
5. Assistance in daily living skills;
6. Behavior and/or psychological supports;
7. Medical care, physical care or psychiatric needs;
8. Day program and/or supported employment;
9. Alternate means of communication; and
10. Leisure and recreational interests.

(n) In addition to the information required by N.J.A.C. 10:41-2, the Division shall record the date the individual was added to any category of the waiting list, the age of the parents, the anticipated date placement will be needed and the situation of voluntary caregivers (where applicable).

(o) The preferences and environmental supports shall be reviewed annually.

Amended by R.1996 d.219, effective May 20, 1996.  
See: 28 N.J.R. 1177(a), 28 N.J.R. 2614(a).

Rewrote section.

Amended by R.2000 d.110, effective March 20, 2000.  
See: 31 N.J.R. 1302(a), 32 N.J.R. 1021(a).

Amended by R.2001 d.471, effective January 7, 2002.  
See: 33 N.J.R. 2438(a), 34 N.J.R. 277(a).

In (a), substituted "30" for "14" preceding "days of the determination"; in (b), deleted "cover sheet of the"; in (o), deleted "at the time of the IHP" following "annually".

#### 10:46C-1.6 Procedure for adding to or changing the waiting list category

(a) The case manager shall discuss with the individual and his or her legal guardian, any changes in the circumstances of the individual. Any changes shall be recommended by the IDT. The competent individual or the legal guardian may request a review of the waiting list assignment by the IDT at any time. Requests for changes in the waiting list category shall be made in writing or by alternate means used by the individual to communicate. If approved, the change shall be made effective as of the date of the written request.

(b) The case manager or his or her supervisor shall schedule a review with the PRT. The PRT shall be responsible to review the information to determine if the criteria for assignment to the priority category is met.

1. At a minimum, the PRT shall be composed of five members, of whom one shall be family or community members.

2. At least three members of the PRT shall be present for the conduct of business.

3. There shall be at least one PRT for each region. The PRT shall meet no less than monthly.

4. The individual and/or his or her legal guardian shall be invited to attend the next mutually convenient PRT meeting.

(c) At the scheduled time, the case manager or his or her supervisor and invited family shall make a presentation, verbal or written, regarding the individual and his or her particular situation. The case manager shall document and present prior interventions implemented to stabilize the individual in his or her current situation.

1. The individual or his or her legal guardian shall be invited, in writing, to present their views.

2. The individual or his or her legal guardian shall leave the meeting once they have presented their views.

(d) Individuals referred from out-of-region are reviewed by the sending PRT and prioritized for placement. The receiving PRT will notify the sending PRT of any available placements.

(e) The chairperson of the PRT is responsible for notifying the IDT and the individual or his or her legal guardian, in writing within 30 days of a decision regarding the Waiting List status.

(f) Alternate means of communication shall be provided as needed.

Amended by R.1996 d.219, effective May 20, 1996.  
See: 28 N.J.R. 1177(a), 28 N.J.R. 2614(a).

Rewrote section.

Amended by R.2001 d.471, effective January 7, 2002.  
See: 33 N.J.R. 2438(a), 34 N.J.R. 277(a).

In (a), added final two sentences; in (b), substituted "priority" for "urgent" in the introductory paragraph, inserted "At a minimum," prior to "The PRT", "five" for "seven", and "one" for "three" in 1, and substituted "three" for "four" in 2; in (c), inserted "and invited family" following "supervisor" in the introductory paragraph.

#### 10:46C-1.7 Offers of services

(a) When an individual is found eligible for functional services in accordance with the provisions of N.J.A.C. 10:46, the most appropriate service shall be identified. The IDT shall evaluate the needs and abilities of the individual at the time that a specific service is recommended.

(b) If an eligible individual cannot be admitted to the most appropriate service, he or she shall be offered an alternate service.

(c) The availability of a service shall be subject to the limits of the Division's funding resources for that Fiscal Year.

(d) The proximity of the individual to interested family or friends shall not be limited to the person's assigned region. An effort shall be made to find a placement close to the individual's interested family or friends.

(e) All offers of placement shall be made by telephone and followed up in writing with a request that the Division be notified within 14 calendar days if the placement is accepted. Alternate forms of communication shall be provided as appropriate.

1. The individual served or her or his legal guardian shall be asked to give a written response to the offer or by alternate means used by the individual to communicate.

2. If no response is received, Division staff shall contact the individual or his or her legal guardian in person, where appropriate, or by telephone to elicit a response. That response shall be confirmed by the Division in writing. Two attempts at such contact should be made.

3. If there is no response to the written offer and the individual or legal guardian cannot be reached by telephone, the offer shall be deemed to be declined. The Division staff shall write to the individual or legal guardian, confirming the Division's efforts to obtain a response and shall indicate that the offer is deemed to have been declined.

(f) Assignment to the priority deferred category shall be made when an offer is declined or the person agrees to accept in-home supports as an alternative to residential placement.

(g) If the person elects to participate in the self-determination process, he or she shall be removed from the priority waiting list once his or her budget and plan are approved by the Division.

Amended by R.1996 d.219, effective May 20, 1996.

See: 28 N.J.R. 1177(a), 28 N.J.R. 2614(a).

Amended (f) and added (g) through (k).

Amended by R.1998 d.479, effective September 21, 1998.

See: 30 N.J.R. 1012(a), 30 N.J.R. 1255(a), 30 N.J.R. 3518(a).

Rewrote (f) through (h); and deleted former (i) through (k).

Amended by R.2001 d.471, effective January 7, 2002.

See: 33 N.J.R. 2438(a), 34 N.J.R. 277(a).

Rewrote (f) and (g); deleted (h).

#### 10:46C-1.8 Parents who reach age 60 and request residential services

(a) When both parents or adoptive parents reach age 60, they shall be given the option to have the individual placed on the priority waiting list at the time of the annual IHP. In this instance, the date that the younger parent turns 60 shall be the date the individual is added to the priority category.

1. In situations where both parents are alive, but only one is the primary caregiver, it is only required that the parent who has sole custody reach age 60 to have the option to have the individual placed on the priority waiting list.

(b) If the parent(s) does not choose to have the individual placed on the priority waiting list, the parent(s) shall be given an option to place the individual on the waiting list no less than annually.

(c) If the parent(s) decides not to put the individual on the priority category at the time they reach age 60 but later chooses to add the individual, the individual shall be added on the priority list according to the date the parent(s) makes the request in writing or on the date of the IHP, for assignment to the priority category.

(d) If the application for services is made after the parents turn 60, the date the individual is made eligible shall be the date that the individual is added to the waiting list if the waiting list assignment is requested.

New Rule, R.1996 d.219, effective May 20, 1996.

See: 28 N.J.R. 1177(a), 28 N.J.R. 2614(a).

Former section, "Appeals", recodified to 10:46C-1.14.

Amended by R.2000 d.110, effective March 20, 2000.

See: 31 N.J.R. 1302(a), 32 N.J.R. 1021(a).

Amended by R.2001 d.471, effective January 7, 2002.

See: 33 N.J.R. 2438(a), 34 N.J.R. 277(a).

Substituted "60" for "55" and substituted "priority" for "urgent" throughout; in (b), deleted "at the time of the IHP" following "annually"; in (c), inserted "or on the date of the IHP," following "writing".

#### 10:46C-1.9 Children for whom residential services are requested

(a) In addition to the provision of N.J.A.C. 10:46-1.4(d)1iii, any child eligible for services, whose transitional plan pursuant to N.J.A.C. 6A:14 indicates the possible need for services, shall be assessed during the child's 14th year. The need shall be reviewed annually.

(b) For any child placed residentially by a local educational authority (LEA) in New Jersey, the Division of Developmental Disabilities shall assign that child to the priority category based on the date that the child was residentially placed by the LEA or no less than three years before the child's educational entitlement ends, whichever date is earlier. The anticipated need for placement shall be reviewed annually at the time of the IHP. The Division shall not assume responsibility for a residential placement until the child's educational entitlement ends.

New Rule, R.1996 d.219, effective May 20, 1996.

See: 28 N.J.R. 1177(a), 28 N.J.R. 2614(a).

Amended by R.2000 d.110, effective March 20, 2000.

See: 31 N.J.R. 1302(a), 32 N.J.R. 1021(a).

In (a), inserted "or day program" following "for residential".

Amended by R.2001 d.471, effective January 7, 2002.

See: 33 N.J.R. 2438(a), 34 N.J.R. 277(a).

In (a), updated N.J.A.C. reference, and deleted "residential or day program" following "possible need for"; rewrote (b).

**10:46C-1.10 Emergency residential placement**

(a) An emergency shall not be handled through the waiting list procedure. An emergency shall be handled in accordance with N.J.A.C. 10:46B-3.3.

(b) Once an individual is placed following an emergency, the IDT shall meet to determine if the emergency placement is appropriate.

(c) If the IDT determines that the emergency placement is appropriate and the individual has a waiting list assignment, he or she shall be removed from the waiting list.

(d) If the IDT determines that the placement is inappropriate as a long-term placement, the individual shall be placed in the next appropriate Division-funded vacancy that becomes available. If no Division-funded vacancy becomes available beforehand, the individual shall be added to the next available initiative.

New Rule, R.1996 d.219, effective May 20, 1996.

See: 28 N.J.R. 1177(a), 28 N.J.R. 2614(a).

Amended by R.2000 d.110, effective March 20, 2000.

See: 31 N.J.R. 1302(a), 32 N.J.R. 1021(a).

Amended by R.2001 d.471, effective January 7, 2002.

See: 33 N.J.R. 2438(a), 34 N.J.R. 277(a).

Rewrote (d).

**10:46C-1.11 Psychiatric admission**

(a) When an eligible individual is placed in a psychiatric care facility, the Division shall reserve the placement if the individual had been in a Division placement at the time of the psychiatric admission, unless the IDT determines that the individual cannot return to the Division placement, because the placement is no longer appropriate.

(b) If the IDT determines that the individual will not be able to return, the individual in the psychiatric care facility shall be assigned to the priority category.

(c) When the eligible individual is ready for discharge as determined by the psychiatric care facility but has not been in a Division placement prior to his or her psychiatric admission, the IDT shall determine if the individual can return to his or her previous living arrangement. If the individual cannot, the PRT may assign him or her to the priority category.

(d) Where the IDT raises a question of dangerousness, based upon the individual's behavior as reported by the psychiatric care facility, no assignment shall be made. The IDT shall meet no less than 30 days from the report from the psychiatric care facility and, if clinical questions remain, the appropriateness of the release from the psychiatric setting may be questioned by the Division.

New Rule, R.1996 d.219, effective May 20, 1996.

See: 28 N.J.R. 1177(a), 28 N.J.R. 2614(a).

Amended by R.2001 d.471, effective January 7, 2002.

See: 33 N.J.R. 2438(a), 34 N.J.R. 277(a).

In (b) and (c), substituted references to "Urgent" for references to "priority"; in (d), inserted "no less than 30 days from the report from the psychiatric care facility" following "meet".

**10:46C-1.12 Movement between residential placements**

(a) When an individual accepts a placement which is appropriate to his or her needs but the placement is not the preferred placement, he or she shall be removed from the priority category.

(b) At the time the placement is offered, the individual or guardian shall be permitted to decline the placement.

(c) If the individual refuses a second offer, the procedure outlined in N.J.A.C. 10:46C-1.7 shall be followed.

(d) If the placement which is not preferred is accepted, the individual or guardian shall be permitted to request a transfer to a preferred placement. Such a request will be facilitated by regional staff between or among agreeable parties.

(e) The provider shall be advised if the preferred placement of the individual or guardian is not the provider selected.

(f) The individual or guardian shall be advised in writing that, by accepting the placement, the individual is removed from the priority waiting list.

(g) If a person is placed in a developmental center, he or she is placed as an emergency because there was no appropriate available community placement.

1. The person shall be placed in the next appropriate Division funded vacancy that becomes available. If no Division funded vacancy becomes available beforehand, the individual shall be added to the next available initiative.

(h) When an individual is in a developmental center and movement to another living unit at the developmental center is either requested or recommended by the IDT, movement shall be facilitated by the Division as soon as vacancies occur.

1. The services available in one living unit at a developmental center are presumed to be the same as another living unit for those units which participate in the Federal program, Intermediate Care Facilities for the Mentally Retarded or Developmentally Disabled (ICF/MR).

(i) The Division shall create a "Transfer Requested/ Preferred" list that addresses movement between placements.

1. The purpose of the Transfer Requested/Preferred list is to respond to requests for transfer, which are separate from the requests for placement which are on the waiting list.

2. This list shall be separate from the waiting list for residential or day placement.

3. Wherever possible, the Division should facilitate the requested transfer. This may be accomplished in several different ways:

i. Individuals may be moved between placements already funded by the Division so long as both parties agree to the move.

ii. Resources that are identified for new development may be used to create a support plan for an individual who is in a currently funded Division placement and who has requested a transfer from that placement. This can be accomplished as long as the person to whom the new development resources are assigned accepts the funded placement which will be vacated by the person requesting the transfer.

New Rule, R.1996 d.219, effective May 20, 1996.

See: 28 N.J.R. 1177(a), 28 N.J.R. 2614(a).

Amended by R.2000 d.110, effective March 20, 2000.

See: 31 N.J.R. 1302(a), 32 N.J.R. 1021(a).

Added (g) through (i).

Amended by R.2001 d.471, effective January 7, 2002.

See: 33 N.J.R. 2438(a), 34 N.J.R. 277(a).

Substituted "priority" for "urgent" throughout; in (b), substituted "decline" for "refuse" and deleted "and remain on the urgent category" following "placement"; in (g), inserted "as an emergency" following "placed" in the introductory paragraph, and rewrote 1; in (h) substituted "vacancies occur" for "feasible".

#### 10:46C-1.13 Reassessment of residential waiting list assignment

(a) All individuals who are assigned to the urgent category as of January 7, 2002 shall be reassigned to the priority category except as provided for in (c) below.

(b) All individuals assigned to other waiting list categories will be reassigned to the general waiting list.

(c) Individuals who have declined an offer to have a placement developed or who accept in-home supports, shall be assigned to the priority deferred category.

New Rule, R.1996 d.219, effective May 20, 1996.

See: 28 N.J.R. 1177(a), 28 N.J.R. 2614(a).

Amended by R.1998 d.479, effective September 21, 1998.

See: 30 N.J.R. 1012(a), 30 N.J.R. 1255(a), 30 N.J.R. 3518(a).

In (c), substituted "before" for "after" following "on or".

Amended by R.2000 d.110, effective March 20, 2000.

See: 31 N.J.R. 1302(a), 32 N.J.R. 1021(a).

Amended by R.2001 d.471, effective January 7, 2002.

See: 33 N.J.R. 2438(a), 34 N.J.R. 277(a).

Rewrote the section.

#### 10:46C-1.14 Appeals

(a) If an individual or legal guardian disagrees with the categorization or the service offered, that decision may be appealed in accordance with N.J.A.C. 10:48-1.

(b) Upon the initial determination and each determination made thereafter, the individual or legal guardian shall be informed in writing that they have the right to appeal the categorization or the appropriateness of the services to be provided. With each notification, the individual or his or her legal guardian shall be provided with a description of the appeals procedure. Alternate forms of communication shall be provided, as appropriate.

(c) Appeals of proposed transfers from one living unit in a developmental center to another shall be considered non-contested as long as both living units participate in the Federal program, ICF/MR.

(d) Appeals of proposed transfers where one living unit in a developmental center participates in the Federal program, ICF/MR and the other does not shall be considered to be contested cases.

Recodified from 10:46C-1.8 by R.1996 d.219, effective May 20, 1996.

See: 28 N.J.R. 1177(a), 28 N.J.R. 2614(a).

Amended by R.2000 d.110, effective March 20, 2000.

See: 31 N.J.R. 1302(a), 32 N.J.R. 1021(a).

Added (c) and (d).

#### 10:46C-1.15 Waiting list for day programs

(a) An individual may be placed on the day program waiting list if he or she or his or her legal guardian requests in writing a Division day program and the following conditions are met:

1. The individual does not have the opportunity for competitive or supported employment;

2. The individual does not have an educational entitlement and there are no other day program options available to the individual at the time the request is made; and

3. The individual is at least 21 years of age.

(b) If an individual currently has an entitlement to education and is eligible for services from the Division of Developmental Disabilities, placement on a waiting list for day programs may be requested as early as five years before the end of the person's educational entitlement.

(c) Placement shall be made based upon the length of time an individual has been on the waiting list, except in an emergency.

(d) The criteria for an emergency placement in a day program are:

1. The individual has been placed in a Division funded residential placement and does not have a current day program;

2. The individual would become homeless without a day placement; or

3. The individual requires supervision which is not available during the day and is at risk of imminent peril.

(e) When the Division finds that an emergency exists, the Division shall offer an emergency placement, within no more than 10 working days. The Division shall provide support services to the extent there are resources until the emergency placement is available.

1. The emergency placement may be a temporary day activity.
2. The offer of an emergency placement may or may not include transportation by the Division to and from the day program, based on the availability of transportation.

(f) When a vacancy occurs in an existing program or an appropriation is targeted for the day program waiting list, Division staff shall identify possible individuals appropriate for the placement using the following criteria:

1. The date the person was placed on the day program waiting list;
2. That the person is not employed nor in another appropriate day program;
3. The present needs of the individual as well as anticipated future needs, as delineated in the individual's IHP;

4. The ability of the placement to meet the individual's needs, as specified in the individual's IHP;

5. That there are no other appropriate options for day program available; and

6. Any other information pertinent to the needs of the individual.

(g) Transportation shall be provided to the closest feasible location to the individual's living situation. Existing transportation arrangements shall be considered when determining which day program is offered. Transportation is not always available from all parts of a given county to a specific day program.

(h) If the individual is placed in another publicly-funded day program or becomes competitively employed while he or she is on the day waiting list, he or she shall be removed from the list.

New Rule, R.2000 d.110, effective March 20, 2000.

See: 31 N.J.R. 1302(a), 32 N.J.R. 1021(a).

Amended by R.2001 d.471, effective January 7, 2002.

See: 33 N.J.R. 2438(a), 34 N.J.R. 277(a).

In (b), substituted "five years" for "36 months".

