

CHAPTER 46B**PLACEMENT****Authority**

N.J.S.A. 30:4-25.4 and 30:4-165.2.

Source and Effective Date

R.1999 d.432, effective December 20, 1999.
See: 31 N.J.R. 1786(a), 31 N.J.R. 4262(a).

Executive Order No. 66(1978) Expiration Date

Chapter 46B, Placement, expires on December 20, 2004.

Chapter Historical Note

Chapter 46B, Placement, was adopted as R.1995 d.44, effective January 17, 1995. See: 26 N.J.R. 3611(a), 27 N.J.R. 360(a).

Pursuant to Executive Order No. 66(1978), Chapter 46B, Placement, was readopted as R.1996 d.85, effective January 17, 1996. See: 27 N.J.R. 3537(a), 28 N.J.R. 1265(a).

Chapter 46B, Placement, was repealed and Chapter 46B, Placement, was adopted as new rules by R.1999 d.432, effective December 20, 1999. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS**10:46B-1.1 Purpose; authority**

The Division of Developmental Disabilities, Department of Human Services intends this chapter to establish standards and criteria for the placement of eligible persons, pursuant to N.J.S.A. 30:4-25.6. This chapter provides guide-

lines for placement. Each individual's abilities, needs and preferences are different. Division staff shall consider the circumstances of each individual in light of his or her unique situation in making placement decisions. Division staff shall exercise reasonable professional judgment in making such decisions.

10:46B-1.2 Scope

The provisions of this chapter shall apply to all eligible individuals requesting residential placement.

10:46B-1.3 Definitions

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

“Available” means the service may be offered within the limitations of funding in a given fiscal year.

“Basic needs” means food, shelter and personal safety.

“Broker” means to arrange a service for an eligible individual without responsibility to fund that service.

“Bureau of Guardianship” (BGS) means the unit within the Division of Developmental Disabilities which has the responsibility and authority to provide guardian of the person services to individuals in need of such services in accordance with N.J.A.C. 10:45.

“Caregiver” means an individual other than a parent, spouse or child of an eligible person including, but not limited to, sibling, grandparent, step family member, aunt, uncle, cousin or legal guardian who, without monetary payment, cares for the eligible person in his or her own home.

“Child” means a person under 18 years of age.

“Congregate setting” means a community residence as defined in N.J.A.C. 10:44A, developmental center, or a nursing home.

“Director” means the Director of the Division of Developmental Disabilities.

“Division” means the Division of Developmental Disabilities.

“Emergency” means that the eligible person is homeless or in imminent peril.

“Homeless” means that the person has no place to live or the person’s living arrangement will end on a date certain within 30 days and he or she has no other living arrangements after that date.

“Imminent peril” means a situation which could reasonably be expected to cause serious risk to the health, safety or welfare of the individual receiving services or another person in the current living arrangement. Imminent peril does not exist if the Division can put supports into the living arrangement which eliminate the serious risk to the individual.

“Individual habilitation plan” (IHP) means a written plan of intervention and action that is developed by the interdisciplinary team. (See N.J.A.C. 10:46B-2.1(j).)

“Interdisciplinary team” (IDT) means an individually constituted group responsible for the development of a single, integrated IHP. (See N.J.A.C. 10:46B-2.1(k).)

“Local education agency” (LEA) means a public board of education or other public authority having administrative control of schools in a city, township or other political subdivision of the State.

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

“Office of Education” means the component of the Department of Human Services which supervises the educational programs in all State facilities operated by, or under contract with, the Department.

“Private institution” means a private residential facility for the developmentally disabled located in New Jersey which is licensed in accordance with N.J.A.C. 10:47, or any out-of-State institutional placements.

“Private out-of-State placement” (POSP) means an out-of-State placement in a community setting, such as a group home or supervised apartment or other similar placement as defined in N.J.A.C. 10:44A, which is licensed or otherwise approved by the appropriate agency in the state in which it is located. A community program which is operated by an institution is a POSP.

“Regional Assistant Director” means an employee of the Division with administrative authority over community programs and institutions within a specific geographic region of the State.

“Regional Administrator” means an employee of the Division with administrative authority over community programs within a specific geographic region of the State.

“Respite services” means a short term arrangement in which an entity licensed in accordance with N.J.A.C. 10:44A or N.J.A.C. 10:44B provides supports for a person with developmental disabilities when that person’s parent, child, spouse or caregiver(s) is temporarily unable to provide care. Such arrangements are not placements.

SUBCHAPTER 2. ADMINISTRATION

10:46B-2.1 General standards for administration of placements

(a) The Division recognizes that families provide care for most individuals with developmental disabilities.

(b) Individual and family support shall be provided whenever possible to avoid long term out-of-home placements. Such support shall be provided to the family in accordance with N.J.A.C. 10:46A, subject to the availability of funding in a given fiscal year.

(c) The Division recognizes that, even with support, not all families or caregivers can provide the individual with a living arrangement. The Division further recognizes that even when the family or caregiver can support the individual, the family or caregiver should not be expected to provide support indefinitely.

(d) Whenever possible, the individual shall be offered an available placement in a setting which is least restrictive of his or her personal liberty.

(e) Because an individual’s needs and abilities change, no out-of-home placement shall be considered permanent.

(f) When placement is appropriate, every effort shall be made to place an individual within New Jersey.

(g) The Division shall make every effort to return individuals placed out-of-State to an in-State residence as soon as possible, except where the conditions stipulated in N.J.A.C. 10:46B-4.3 have been satisfied.

(h) The Division shall place an individual only in a licensed facility appropriate for that individual, as documented in his or her IHP. (See (j) below.) An individual may choose to live independently in an unlicensed facility and may continue to receive support services from the Division, in which case the provisions of this chapter shall not apply. If the person resides in an unlicensed facility using special funding provided through the Division to promote self-determination, the provisions of this chapter shall not apply.

(i) When funding from a source other than the Division is available to the individual, Division staff may broker a placement. In such an instance, the Division shall not be responsible to provide any funding for placement. If the Division brokers a placement, the person’s current waiting list status shall continue.

(j) The IHP specifies both the prioritized goals and objectives being pursued by each individual and the steps being taken to achieve them. The IHP may identify a continuum of skill development that outlines 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.

(k) The interdisciplinary team (IDT) shall consist of the individual receiving services, the legal guardian, the individual's parents or family member (if the individual is an adult and desires that the parent or family member be present), 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.

Case Notes

Late-in-life placement change from private to public facility violated protected rights of older disabled patient who had lived all his life in same private placement. *N.J.W. v. Division of Developmental Disabilities*, 96 N.J.A.R.2d (DDD) 25.

Placement for developmentally disabled adult upon closure of training center was placement that was otherwise most appropriate to individual's development. *M.S. v. Developmental Disabilities*, 95 N.J.A.R.2d (DDD) 31.

Alternate placement when most appropriate service was not available due to fiscal limitations was most appropriate to maximizing developmentally disabled adult's potential. *R.W. v. Developmental Disabilities*, 95 N.J.A.R.2d (DDD) 23.

Private institutional care in residential placement was not available due to fiscal limitations, but alternate placement to provide appropriate care for developmentally disabled adult was available. *P.F. v. Developmental Disabilities*, 95 N.J.A.R.2d (DDD) 1, appeal decided 656 A.2d 1.

SUBCHAPTER 3. PLACEMENTS

10:46B-3.1 Availability of placements

(a) When the need for placement is indicated in the IHP, the Division shall plan with the individual, his or her legal guardian and, where appropriate, interested family members, to identify an appropriate, available, out-of-home placement.

(b) The availability of placements shall be limited to the Division's funding in a given fiscal year. Prioritization for placement shall be governed by N.J.A.C. 10:46C.

(c) All placements shall be in accordance with all applicable Federal and State statutes, regulations and rules, including the State Code of Criminal Justice provision at N.J.S.A. 2C:30-4 which prohibits the disbursement of public money or the incurring of obligations in excess of legislative appropriation and limit of expenditure.

(d) In an effort to provide fairly for all individuals served, it is recognized that Division appropriations need to be applied across the State and across the entire fiscal year and that planning and judgment are necessary and appropriate on a case-by-case basis as well to ensure that appropriations are not dissipated in an effort to meet extraordinary needs of one individual to the detriment of the rest of the population who require and could benefit from services needed to be funded from the same finite source.

10:46B-3.2 Waiting lists

If a placement is not immediately available, the individual shall be assigned to a waiting list category, in accordance with N.J.A.C. 10:46C.

10:46B-3.3 Emergency placements

(a) An emergency need for placement shall be deemed established when the person is homeless or in imminent peril, as defined in this chapter. Supports may be provided to the person where he or she is currently living to avoid homelessness or imminent peril. Where supports can be provided, the Division shall not declare a need for an emergency placement.

(b) When the Division determines that the need for an emergency placement exists, the individual shall be offered a placement which can meet his or her basic needs as defined in N.J.A.C. 10:46B-1.3.

1. The Regional Administrator shall determine whether an emergency exists, in accordance with the provisions of (a) above.

2. The individual or legal guardian shall be notified by telephone by the case manager of the offer of emergency placement.

3. The individual or legal guardian shall be required to accept or reject the offer of placement within three working days.

4. The individual or legal guardian may visit the proposed emergency placement, so long as the visit occurs before the response to the offer of emergency placement is due.

5. If there is no response within the required time period, the offer of emergency placement shall be deemed by the Division to be rejected.

6. The Division shall confirm in writing the circumstances of the emergency, the offer of placement and the final disposition of the matter in writing.

(c) When the Division determines that the need for an emergency placement exists, the development of an IHP shall not be required prior to placement.

(d) An IHP shall be developed within 30 calendar days following an emergency placement, to plan for an orderly transition to a more permanent placement, unless the IDT confirms the appropriateness of the emergency placement as a long-term placement.

10:46B-3.4 Placement of children

(a) The placement of children shall conform to the requirements of N.J.A.C. 10:17.

(b) Children shall be maintained in their own home whenever possible.

(c) When a child is placed outside his or her own home, he or she shall be placed with a relative whenever possible.

(d) When a child cannot be maintained with his or her immediate or extended family, he or she shall be placed in a family setting, such as a community care home as defined in N.J.A.C. 10:44B, whenever possible.

(e) A child may be placed in a congregate setting, such as a group home or developmental center, only when the Regional Assistant Director certifies that no other placement exists and the placement would be appropriate given the child's needs, unless the Division has a specific contract with the provider for the placement of children.

(f) The IDT shall meet no less than 30 days following placement to review the needs of the child in the placement and to facilitate visitation by the family.

(g) A child placed outside his or her home has a right to be free from repeated changes in placement before his or her long-term placement or return home. Every effort shall be made to provide a stable placement until the child can return to his or her home and, except in emergencies, any change in the placement shall be made in accordance with the child's IHP.

(h) The Division shall support the provision of a free and appropriate education for the child and shall participate in meetings to the extent possible within existing resources with the LEA to develop the Individual Education Plan (IEP). Representatives of the LEA shall be invited by the Division to attend meetings to develop the IHP.

(i) The appropriate LEA will provide education unless the child is placed in a State facility. If the child is placed in a State facility, the Office of Education shall provide education. A child is not considered placed in a State facility if he or she is receiving respite services in the facility.

(j) The need for placement shall be evaluated no less than annually at the time of the IHP. At each IHP meeting, the IDT shall consider the possibility of returning the child to his or her family.

(k) Records may be released in accordance with N.J.A.C. 10:41-2.13(a) to assist in the coordination of services between the LEA and the Division.

SUBCHAPTER 4. PLACEMENT DECISIONS

10:46B-4.1 General standards for placement decisions

(a) Appropriations for placements received by the Division may be targeted to specific populations. The budget language may identify the persons eligible for consideration for placement. If no such language is provided, the Division shall be guided by (d) below.

(b) Placements are offered to persons in need of emergency residential services as defined in N.J.A.C. 10:46B-3.3.

(c) When a person has been placed outside the State of New Jersey by the Division, a caregiver, family member, legal guardian, an LEA or another state or county entity, the Division shall make every effort to return him or her to the State of New Jersey as soon as possible unless the conditions of N.J.A.C. 10:46B-4.3 have been met. The Division shall not be responsible to return the individual to New Jersey until such time as the individual has been found eligible for services and the Division has assumed responsibility for funding.

(d) When a vacancy occurs in an existing program or an appropriation is targeted for a specific population, Division staff shall identify individuals to be placed, using the following criteria and considering any other information pertinent to the needs of the specific individual. No specific weight or priority shall be given to the 11 categories listed below:

1. The waiting list category;
2. The age, sex and functioning level of the individual;
3. The present needs of the individual as well as anticipated future needs;
4. Preferences including where the individual wishes to live, with whom the individual wishes to live and how geographically close to family and friends the individual wishes to live;
5. The ability of the placement to meet the individual's needs;
6. The likelihood of the success of the placement, including a review of past clinical or diagnostic history;

7. The stability of the individual's present placement, including how well the placement meets the behavior and/or medical needs of the individual;

8. The availability of a caregiver or parent to continue to provide care;

9. The availability of continued funding of a current placement by a party other than the Division;

10. The potential that the placement will be long term; and

11. Acceptance of the individual by the service provider.

(e) In the instance that a placement is equally appropriate for more than one individual, the placement shall be offered to the individual placed in the Urgent Waiting List Category the longest, unless exceptional circumstances warrant otherwise based on each individual's circumstances and need for such services at the time placement becomes available.

(f) Information concerning the individual shall be provided to the individual(s) or agency(s) offering placement. The release of these records to further the individual's habilitation goals is consistent with the requirements of N.J.A.C. 10:41-2.13. Specific authorization from the competent individual or legal guardian shall not be required.

(g) When a placement is offered, the individual, legal guardian and/or family shall be notified by telephone and in writing in accordance with N.J.A.C. 10:46C-1.7. The written notification shall ask that the individual who is competent to make decisions concerning his or her living arrangement or legal guardian respond in writing within 14 calendar days of receipt, whether the offer is accepted or rejected. When the Division agrees that the individual is in need of guardianship services and a family member or the Bureau of Guardianship is pursuing guardianship, the Division shall recognize the proposed guardian as the decision-maker.

(h) When a placement is offered, the individual, legal guardian and/or family shall be given an opportunity to tour the placement and the site of any day programs to be provided.

(i) In the case of residential placements, it is expected in most cases that an overnight visit will occur. The overnight visit may be waived or additional visits required upon mutual agreement of the individual or legal guardian, the Division and the prospective provider.

(j) If a placement is offered and rejected, the Division shall follow the requirements of N.J.A.C. 10:46C-1.7(f) through (k).

(k) An IHP shall be developed by the IDT at least 30 days prior to the projected date of placement, except in an emergency. Family members may attend the IHP meeting

unless there is an objection by the competent individual or legal guardian.

1. The IHP shall indicate the habilitation goals to be achieved by the placement, and the services needed during the transition.

2. The IHP shall be reviewed and revised as necessary, but not later than 30 days following placement.

(l) Every attempt shall be made to place the individual in an area of the State that is in geographic proximity to interested family and friends, if the individual or guardian so chooses.

Case Notes

The ward in a program that his guardian allegedly could no longer afford was not entitled to emergency placement or alternate services by the Division of Developmental Disabilities; the resident was not homeless or in imminent peril, and the guardian was pleased with the arrangements for the resident. *J.D. ex rel. D.D.H. v. New Jersey Division of Developmental Disabilities*, 329 N.J.Super. 516, 748 A.2d 613 (N.J.Super.A.D. 2000).

Community-based placement was appropriate for 23-year-old man who suffered from profound retardation, psychosis, autism, and hyperactivity. *J.E., on Behalf of G.E. v. Department of Human Services*, 96 N.J.A.R.2d (DDD) 55.

Developmental center was most appropriate alternate placement available for petitioner. *M.S. v. Division of Developmental Disabilities*, 93 N.J.A.R.2d (DDD) 5.

10:46B-4.2 Placements in private institutions

(a) Placements in private institutions shall not be made on a routine basis, and shall only be approved by the Division Director when the Director determines that the following criteria have been met:

1. The individual is:

i. Currently in a placement made by the Division and can no longer be maintained in that placement and the only option the Division Director can identify is private institutional placement; or

ii. Subject to a threat to life or safety, or presents a threat to life or safety to the community, and the individual cannot be appropriately cared for in a developmental center and the only option the Division Director can identify is a private institutional placement;

2. The private institution is licensed by the state in which it is located;

3. A contract exists between the private institution and the Division; and

4. Funding is available and authorized by the Division Director.

(b) All requests for funding shall be made through the Regional Assistant Director. If the Regional Assistant Director supports the request, he or she shall forward the request to the Division Director. If the Regional Assistant

Director does not support the request, he or she shall document the reasons for lack of his or her support in the client record.

(c) The Director shall communicate his decision to the Regional Assistant Director in writing.

(d) When the Division assumes responsibility for funding residential services in a private institution, planning for that individual's return from the private institution or a private institution in New Jersey to his or her own or family home or in-State community placement shall begin.

(e) A transition IHP shall be developed to assist the person's transfer to a community placement in return to New Jersey.

(f) When the Division has located a placement in New Jersey other than the private institution, the Division shall offer the placement, in writing, to the individual or legal guardian.

1. The individual and his or her legal guardian shall plan with the Division for the return of the individual to New Jersey.

2. The New Jersey placement shall be contingent upon a successful overnight visit by the individual to the offered placement, if such a visit is required by N.J.A.C. 10:46B-4.1(i).

3. The individual's legal guardian, if any, shall be invited by the Division to visit the proposed placement.

4. Once a successful overnight visit has occurred, if a visit is required by N.J.A.C. 10:46B-4.1(i), admission to the New Jersey placement may be scheduled by the Division.

5. If the competent individual or legal guardian does not agree to plan with the Division to return the individual to a community placement in New Jersey, which shall include an overnight visit, the Division shall determine that it cannot implement the IHP. The individual or legal guardian shall be notified in writing that the Division shall cease funding at the private institution within 90 days. The Division shall also notify the private institution of the date on which funding will cease. The individual shall remain eligible for other services from the Division.

6. If the individual or legal guardian reconsiders and agrees to cooperate in planning for the return of the individual to New Jersey, the Division shall withdraw its notice to cease funding.

10:46B-4.3 Private out of State placements (POSP)

(a) When an individual has been identified for placement pursuant to N.J.A.C. 10:46B-4.1 or is in need of an emergency placement and has been in a POSP for at least one year and the individual has requested funding by the Division in a POSP, the Division may defer plans for his or her return to the State of New Jersey if the following conditions have been met.

1. The person is on the urgent waiting list and he or she is included in a current initiative for placement funded by the Legislature;

2. The individual or legal guardian requests that the POSP be continued;

3. The Division determines that the person is appropriately placed in the POSP;

4. The individual is over 21 years of age; and

5. The cost of the POSP is at or below the cost of the current average community placement in New Jersey, as determined by the Division.

(b) If the conditions in (a) above are met, the Division shall defer a plan to return the individual to New Jersey, as long as the person remains appropriately placed and the cost of the placement remains at or below the cost of the current average community placement in New Jersey. The placement shall be reviewed annually at the time of the IHP. The plan to return the individual to New Jersey shall be deferred for up to three years.

(c) The Division shall not fund placement in the POSP if it is determined by the Division to be inappropriate to meet the needs described in the IHP.

(d) If the Division does not fund the placement for any of the reasons in (a) above, the Division will plan to return the individual to an available placement in New Jersey.

(e) The POSP shall maintain an appropriate license, certificate or other approval by the state in which it is located. Loss of the required license, certification or approval shall be grounds for immediate return of the individual to New Jersey.

(f) No less than annually, at the time of the IHP, the Regional Assistant Director's Office shall contact the appropriate licensing, certification or approval agency to obtain a copy of the license, certification or approval.

(g) The POSP shall agree in writing to provide to the Division a copy of all reports of unusual incidents involving the person placed, as a condition of continued placement.

(h) If the conditions in this section cannot be met, the Division shall give the individual or legal guardian the option to seek a transfer through the Interstate Compact or to apply directly to the state in which the person is located, if the person wishes to remain out-of-State.

(i) When one of the criteria in this section is not met and it is determined by the Division that the individual must be returned to New Jersey, a transition IHP shall be developed by the Division to assist the person in his or her return to New Jersey.

(j) When a placement in New Jersey has been identified, the Division shall offer a placement in writing, consistent with the IHP, to the individual or legal guardian. The individual and his or her legal guardian shall be invited to visit the proposed placement.

(k) It is expected that an overnight visit to the proposed placement shall occur. The overnight visit may be waived or additional visits required by mutual agreement of the individual or legal guardian, the Division and the proposed provider.

(l) If the individual or legal guardian does not plan with the Division to return the individual to New Jersey and to participate in an overnight visit, the Division shall determine that it cannot implement the IHP. The individual or legal guardian shall be notified in writing that the Division shall cease funding the POSP within 90 days. The Division shall also notify the POSP in writing of the date funding will cease. The individual shall continue to remain eligible for other services of the Division.

(m) If the individual or legal guardian reconsiders and agrees to cooperate in planning for the return of the individual to New Jersey, the Division shall withdraw its notice to cease funding.

SUBCHAPTER 5. APPEALS

10:46B-5.1 Placement appeals

(a) Placement decisions may be appealed in accordance with N.J.A.C. 10:48.

(b) Specific offers of placement shall be considered contested cases.

(c) Recommendations of placement changes where no specific offers of placement have been made shall be considered non-contested.

(d) Except in emergencies, a transfer may be deferred, pending the exhaustion of the administrative appeal, if the appeal is received verbally or in writing seven calendar days before the proposed placement and the appellant can demonstrate that there may be irreparable harm to the individual as a result of the placement. The Division Director shall decide whether or not to defer the placement. If the Division Director agrees to defer the placement, the Division shall not be responsible to fund the placement except where the Division was funding the placement prior to the request to defer.