

CHAPTER 46C
WAITING LIST PROCEDURES

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

Source and Effective Date

R.1996 d.219, effective April 15, 1996.
See: 28 N.J.R. 1177(a), 28 N.J.R. 2614(a).

Executive Order No. 66(1978) Expiration Date

Chapter 46C, Waiting List Procedures, expires on April 15, 2001.

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 was re-adopted as R.1996 d.219, effective April 15, 1996. See: Source and Effective Date. See, also, section annotations.

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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 urgency of need for day program or residential placement. The assignment shall not reflect the specific type of service needed. The person's need for placement changes over the course of a person'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 urgency. No specific numbered order is contained in any category. The date that the individual is assigned to a waiting list category shall be recorded.

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 chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"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.

"Department" means the Department of Human Services.

"Division" means the Division of Developmental Disabilities.

"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.

“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.

“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.

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

“Waiting list” means a roster of eligible developmentally disabled individuals 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, or are currently in a community placement and awaiting transfer to another community placement.

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

10:46C-1.4 Waiting list assignment

(a) 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 waiting list assignment and desire to be added to the waiting list shall be reassessed no less than annually, at the time of the IHP. The individual shall receive, in writing, notification of such at the time they receive notice of the IHP meeting.

(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 urgent criteria, he or she shall be assigned to the non-urgent category.

(d) The waiting list system shall consist of three categories; urgent, non-urgent, and not requested at this time, as follows:

1. The urgent 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 urgent 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)1iii below have been met.

ii. The urgent 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 apply.

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

(1) Both of the birth or adoptive parents are 55 years or older;

(2) The individual is living with a person other than the birth or adoptive parents who is providing the service voluntarily and without pay and the person who has been providing care indicates that he or she can no longer care for the person with a developmental disability;

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

(4) Either of the birth or adoptive parents is under age 55 and has a chronic and/or long-term physical or psychiatric condition(s) which limits significantly his or her ability to care for the individual with a developmental disability; or

(5) Either of the birth or adoptive parents is under age 55 and there is a risk to the health or safety of the individual, parent or other individual living in the home due to either of the following conditions:

(A) The individual's behavior(s) presents a risk to self or others which cannot be effectively managed by the parents even with generic or specialized support arranged or provided by the Division; or

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

iv. Assignment to this category shall be made by the Division after the PRT has determined that one or more of the circumstances in (d)1iii exist. Assignment shall be made based on the date the written request was made.

2. The non-urgent category, when requested by an individual or his or her guardian or caregiver, shall be assigned by the Division under the following conditions:

i. Placement is expected to be needed within two years. Assignment to this category shall be made only if the individual would accept his or her preferred service if it were offered.

ii. Assignment to this category shall be made by the Division at the request of the individual, his or her legal

guardian or the person who is voluntarily caring for the individual at that time, if other than the caregiver.

iii. Assignment to this category is made as of the date assignment is requested in writing.

3. "Placement not requested at this time" shall be assigned by the Division, under the following conditions:

i. Assignment to this category shall be made if placement is not desired or needed now but is anticipated at some time beyond two years.

ii. Assignment to this category shall be at the request of the individual, legal guardian, or voluntary caregiver who is not the birth or adoptive parent. Division staff shall have no decision making role in the assignment of this category.

iii. Assignment to this category shall be made based on the date the written request is made.

(e) In the event that two or more individuals have the same assignment date to the urgent 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).

10:46C-1.5 Initial notification

(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 14 days of the determination.

(b) The category shall be included in the cover sheet of 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 at the time of the IHP.

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.

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 of an incompetent individual may request a review of the waiting list assignment by the IDT at any time.

(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 urgent category is met.

1. The PRT shall be composed of seven members, of whom three shall be family or community members.
2. At least four 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 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.

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.

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) If an offer of placement is made and refused, the individual shall remain on the waiting list with his or her then-current category and date of assignment.

(g) The Division shall maintain ongoing contact with the individual and/or legal guardian while he or she remains on the waiting list.

(h) There shall be no further planning for placement by the Division for the individual who has rejected an offer of placement until such time as the individual and/or legal guardian indicates to the Division that he or she wishes to accept a placement offer. The individual and/or legal guardian shall indicate in writing such a willingness to accept an offer. The individual shall then be included in the next waiting list initiative.

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).

10:46C-1.8 Parents who reach age 55

(a) When both parents or adoptive parents reach age 55, they shall be given the option to have the individual placed on the urgent waiting list at the time of the annual IHP. In this instance, the date that the younger parent turns 55 shall be the date the individual is added to the urgent 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 55 to have the option to have the individual placed on the urgent waiting list.

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

(c) If the parent(s) decides not to put the individual on the urgent category at the time they reach age 55 but later chooses to add the individual, the individual shall be added on the urgent list according to the date the parent(s) makes the request in writing for assignment to the urgent category.

(d) If the application for services is made after the parents turn 55, 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.

10:46C-1.9 Children

(a) In addition to the provision of N.J.A.C. 10:46C-1.4(d)iii5, any child eligible for services, whose transitional plan, pursuant to N.J.A.C. 6:28, indicates the possible need for residential services, shall be assessed during the child's 14th year. The need shall be reviewed annually.

(b) For any child placed by a funding source other than the Division, such as a local educational authority, or his or her family, the Division shall consider assignment to the urgent category based on a review of the child's situation no less than three years before funding is scheduled to end. Assignment shall be reviewed annually at the time of the IHP.

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

10:46C-1.10 Emergency 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, the individual shall keep his or her urgency status. He or she shall be assigned to the urgent category if not already assigned at the time of the emergency placement. The date the emergency placement was made shall be the date that the individual is assigned to the urgent category, unless previously assigned.

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

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 urgent 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 Division 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 Urgent 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 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).

10:46C-1.12 Movement between 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 urgent category.

(b) At the time the placement is offered, the individual or guardian shall be permitted to refuse the placement and remain on the urgent category.

(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 urgent waiting list.

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

10:46C-1.13 Reassessment of waiting list assignment

(a) All individuals assigned to Category I as of May 20, 1996 shall be assigned to the urgent category with the same status under which the person was assigned to Category I.

(b) All individuals assigned to other waiting list categories will be reviewed against the criteria contained in this subchapter.

(c) All individuals whose parents reach 55 on or before May 20, 1996 who are not Category I as of May 20, 1996 shall be assigned to the urgent category on May 20, 1996 if a waiting list assignment is requested by the individual and/or his or her guardian(s).

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".

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.

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).