

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

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

Source and Effective Date

R.1996 d.85, effective January 17, 1996.
See: 27 N.J.R. 3537(a), 28 N.J.R. 1285(a).

Executive Order No. 66(1978) Expiration Date

Chapter 46B, Placement, expires on January 17, 2001.

Chapter Historical Note

Chapter 46B, Placement, was adopted as new rules by 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 was readopted as R.1996 d.85, effective January 17, 1996. See: Source and Effective Date. See, also, section annotations.

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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.

10:46B-1.2 Scope

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

guidelines for placement decisions. Each individual's abilities and needs 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-1.3 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.

"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.

"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. The IHP 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 addresses all needs identified. For an individual who makes only specific service requests, the IHP is a service plan which addresses only those specific requests.

"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 parents or family member (if the individual is a minor, or, if an adult, 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 professional and other 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 a placement which is anticipated to be of one year’s duration, or longer.

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

SUBCHAPTER 2. ADMINISTRATION

10:46B-2.1 General standards

(a) The Division recognizes that families function as the primary caregivers 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 the given fiscal year.

(c) The Division recognizes that, even with support, not all families can function as the individual’s caregiver. The Division further recognizes that even when the family can support the individual, the family should not be expected to do so forever.

(d) The Division shall have responsibility for placement only:

1. If the individual is found eligible for services in accordance with N.J.A.C. 10:46; and
 - i. The family can no longer care for the individual; or
 - ii. The individual, if a competent adult, chooses to live away from his or her family; or
 - iii. Placement is recommended in the IHP; and
2. An appropriate placement is available.

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

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

(g) When placement is appropriate, every effort shall be made to place an individual within New Jersey. Placement out-of-State shall be made only as a last resort.

(h) The Division shall make every effort to return individuals placed out-of-State to an in-State residence as soon as possible.

(i) The Division shall place an individual in appropriate licensed facilities. If an individual chooses to live independently in an unlicensed facility, but continues to receive support services from the Division, the provisions of this chapter shall not apply.

(j) When funding from a source other than the Division is available to the individual, Division staff may assist the individual in locating a placement. In such an instance, the Division shall not be responsible to provide any funding for placement.

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 placement becomes necessary, the Division shall plan with the competent 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. 10:48-4.

(c) All placements shall be in accord with all applicable Federal and State statutes, rules, and regulations, including the State Code of Criminal Justice provision at N.J.S.A. 2C:30-4, which prohibits the disbursement of public moneys, 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 judgement 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 recommended in the IHP is not immediately available, the individual shall be assigned to a waiting list category, in accordance with N.J.A.C. 10:48-4, and the Division shall provide an alternate services to the extent such services are available.

10:46B-3.3 Emergency placements

(a) An emergency need for placement shall be established when a long-term placement has been determined to be unavailable and the individual is homeless, or the Division cannot provide adequate alternate service in the existing situation to care for the individual safely.

(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 required by N.J.A.C. 10:46B-1.3.

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

(d) An emergency placement shall not be considered permanent.

(e) An IHP shall be developed within 30 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) 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.

(c) A child may be placed in a congregate setting only when the Assistant Director certifies that no other placement exists.

Amended by R.1996 d.85, effective February 20, 1996.
See: 27 N.J.R. 3537(b), 28 N.J.R. 1285(a).

SUBCHAPTER 4. PLACEMENT DECISIONS**10:46B-4.1 General standards**

(a) In some instances, appropriations for placements received by the Division may be targeted to specific populations. The budget language will identify the persons eligible for consideration for placement. The target populations

may include, but are not limited to, those affected by the closing of a particular developmental center, a specific number of individuals from the waiting list or the return of individuals from out-of-State placements.

(b) In some instances, placements are required to accommodate individuals admitted to a service on an emergency basis.

(c) When a vacancy occurs in an existing program or an appropriation is targeted for a specific population, Division staff shall identify possible individuals appropriate for the placement using the following criteria, and considering any other information pertinent to the needs of the specific individual:

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. The ability of the placement to meet the individual's needs;
5. The likelihood of the success of the placement;
6. The stability of the individual's present placement, including how well the placement meets the behavior and or medical needs of the individual;
7. The availability of a caregiver to continue to provide care;
8. The availability of continued funding by another party of another placement not funded by the Division;
9. The potential that the placement will be long term; and
10. Acceptance of the individual by the service provider.

(d) In the instance that a placement is equally appropriate for more than one individual, the placement shall be offered to the individual placed in Waiting List Category 1 the longest, unless exceptional circumstances warrant otherwise, based on each individual's circumstances and need for such services at the time placement becomes available.

(e) 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.

(f) When an individual is identified for placement, the individual and/or legal guardian shall be notified by telephone and in writing.

(g) When a placement is under consideration, the competent individual or legal guardian shall be given an opportunity

ty to tour the placement and the site of any day programs to be provided.

(h) If deemed necessary by the Division, placement shall be contingent upon an overnight visit at the proposed placement. Failure to permit an overnight visit shall be considered a rejection of the placement offer.

(i) If a placement is offered and rejected, the Division shall review the reason(s) for rejecting the offer with the individual or legal guardian to identify what needs were not met by the offered placement.

(j) An IHP shall be developed at least 30 days prior to the projected date of placement, except in an emergency. Family members may attend, unless there is an objection by the competent individual or legal guardian.

(k) The IHP shall indicate the habilitation goals to be achieved by the placement, and the services needed.

(l) The IHP shall be reviewed and revised as necessary, but no less than 30 days following placement.

(m) 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 so chooses.

Case Notes

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 into private institutions

(a) Placements into private institutions shall not be considered routine and may only be approved in extraordinary circumstances by the Division Director.

(b) When a person has been placed outside the State of New Jersey, either by the Division, an LEA, a family member, 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.

(c) When the Division accepts responsibility for services, an individual shall be returned from a private institution to his or her own or family home or community placement whenever possible. If an individual cannot be placed in his or her own family home and the Division's resources do not allow community placement, the individual shall be placed in the most appropriate placement available.

(d) The Division shall only place an individual in a facility licensed by the state in which it is located.

(e) Funding shall be authorized only when a contract exists between the private institution and the Division.

(f) Funding, if available, of a private institution may be authorized if one of the following conditions are met:

1. The individual is 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

2. The individual's life or safety is threatened or the community is at risk 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.

(g) All requests for funding shall be made through the appropriate Assistant Director.

(h) If the Assistant Director supports the request, he or she shall forward the request for funding to the Director.

(i) The Director shall communicate his or her decision to the Assistant Director in writing.

(j) When the Division has located a placement other than the private institution, the Division shall offer a placement consistent with the IHP in writing to the individual or legal guardian.

1. The offer of placement shall be contingent upon a successful overnight visit by the individual to the proposed placement.

2. The legal guardian, if any, shall also be invited to visit the proposed placement.

3. Once a successful overnight visit has occurred, admission to the new placement may be scheduled.

4. If the competent individual or legal guardian does not agree to 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.

5. If the individual or legal guardian reconsiders and agrees to an overnight visit, the Division shall withdraw its notice to cease funding, once the visit has been completed.

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 placement may be deferred pending the exhaustion of the administrative appeal if the appeal is received verbally or in writing 30 calendar days

before the proposed placement and the appellant can demonstrate that there may be irreparable harm to the individual as the 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.

Administrative correction.
See: 27 N.J.R. 499(b).