

DIVISION CIRCULAR #12
(N.J.A.C. 10:46B)

DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES

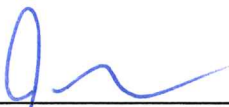
EFFECTIVE DATE: November 17, 2017

DATE ISSUED: August 5, 2019

(Rescinds Division Circular #12, "Placement", issued on August 8, 2005)

- I. **TITLE:** Placement
- II. **PURPOSE:** To establish the Division's practices concerning placement into residential services.
- III. **SCOPE:** This circular applies to all components of the Division.
- IV. **GENERAL STANDARDS:**

NOTE: The remainder of this circular is the regulation for Placement as it appears at N.J.A.C. 10:46B.



Jonathan S. Seifried,
Assistant Commissioner

CHAPTER 46B

PLACEMENT

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. Placements are made in accordance with N.J.A.C. 10:46C except when there is the need for an emergency service or emergency placement. This chapter provides guidelines 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 judgement in making such decisions.

10:46B-1.2 Scope

The provisions of this chapter shall apply to all eligible individuals. The provisions of this chapter shall not apply to persons whose services are funded through the Medicaid fee-for-services model. Placement decisions for these individuals shall be made in accordance with Medicaid standards applicable to the relevant Medicaid waiver and as part of the development of the individual's service plan. Residential placement will be offered to individuals placed on the Division's Priority Waiting List, as described at N.J.A.C. 10:46C unless they meet the criteria of N.J.A.C. 10:46B-3.3, Emergencies, 4.2, Private institutions, or 4.3, Private out-of-State placements.

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.

"Assistant Commissioner" means the Assistant Commissioner of the Division of Developmental Disabilities.

"Assistant Director" means an employee of the Division with administrative authority over community services.

"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 Department of Human Services 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.

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

"Division" means the Division of Developmental Disabilities.

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

"Emergency services" means a supervised apartment operated by an agency with whom the Division specifically contracts to provide services for up to 60 days when the Division determines that an emergency exists. Services provided include safety, stabilization and assessment prior to a long-term placement or return to the former living arrangement. Emergency services are not considered a residential placement as defined in this rule.

"Funded vacancy" means a residential placement opportunity with a provider agency that is presently funded through a contract with the Division which becomes available when an individual receiving services moves from that placement.

"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).)

"Long-term placement" means a placement which is anticipated to be of one year's duration or longer.

"Placement" means a waiver service as defined at N.J.A.C. 10:46-1.3 that provides a residence to the individual or day services that are provided out of the residence.

"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.

"Residential placement funded by the Division of Developmental Disabilities" means a living arrangement that is operated by the Division and certified by the Department of Human Services, licensed by the Department of Human Services under N.J.A.C. 10:44A, 10:44B, 10:44C, or 10:47.

"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.

"Supervised apartment" means apartments that are occupied by individuals with developmental disabilities and leased or owned by an entity licensed under N.J.A.C. 10:44A.

"Supports" means those services other than residential services provided by the Division which will help the individual remain in his or her living situation.

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 P.L. 2015, c. 192 exist or N.J.A.C. 10:46B-4.3 have been satisfied, as applicable.
- (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.
- (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.

SUBCHAPTER 3. PLACEMENTS

10:46B-3.1 Availability of placements

- (a) Residential placement is a waiver service. In order to receive placement, the individual and/or representative payee is responsible to make application for all benefits, comply with the requirements for all benefits and comply with the requirements of N.J.A.C. 10:46-2.1(g) and (h).
- (b) Only when the need for placement is indicated in the IHP and when the individual can be reached on the waiting list, in accordance with N.J.A.C. 10:46C, 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) Approval by the Assistant Commissioner shall be required for all admissions to developmental centers, in accordance with the provisions of N.J.A.C. 10:46B-4.2.

10:46B-3.2 Waiting lists

- (a) Except as otherwise provided in N.J.A.C. 10:46B-3.3, 4.2 and 4.3, a person shall be placed residentially only from the priority waiting list, N.J.A.C. 10:46C.
- (b) 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 Emergencies

- (a) An emergency need for services or 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 services or placement.
- (b) When the Division has determined that an emergency exists, the Division shall offer emergency services, if available. Emergency services shall meet the individual's basic needs.
 - 1. The individual or his or her legal guardian shall be notified by telephone which agency will provide emergency services and where to take the eligible individual.
 - 2. The Division shall confirm in writing the offer of emergency services.
 - 3. Emergency services shall be provided for 30 days during which time the provider agency shall conduct an assessment to determine:
 - i. Whether the individual may return home with or without supports; or
 - ii. If the provider agency shall offer a long-term placement.
 - 4. Emergency services may be continued for an additional 30 days in order to transition the individual to return back to his or her home or to the long-term placement arranged by the agency in coordination with the Division.
 - 5. When emergency services are provided, an IHP shall be developed prior to the individual's return home or to the provision of a long-term placement.
- (c) When the Division determines that an emergency exists and no emergency services are available, the individual shall be offered a placement in a funded vacancy which can meet his or her basic needs as defined in N.J.A.C. 10:46B-1.3. The Division may provide additional supports in the funded vacancy to meet the individual's basic needs.
 - 1. The individual or legal guardian shall be notified by telephone by the case manager of the offer of emergency placement.
 - 2. The individual or legal guardian shall be required to accept or reject the offer of placement within three working days.
 - 3. 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.

4. If there is no response within the required time period, the offer of emergency placement shall be deemed by the Division to be rejected.
5. The Division shall confirm in writing the circumstances of the emergency, the offer of placement and the final disposition of the matter.
6. If an offer of emergency placement is declined, the Division may reevaluate whether there is a need for an emergency placement.
7. When the Division determines that the need for an emergency placement exists, the development of an IHP shall not be required prior to placement.
8. 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 placement will meet the needs of this individual as a long-term placement. If the IDT determines that the placement is inappropriate, 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 when the Division receives an appropriation for placement.

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, 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 P.L. 2015, c. 192 or N.J.A.C. 10:46B-4.3 have been met, as applicable. 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 10 categories listed below:
 1. The age, sex and functioning level of the individual and the geographic proximity of the proposed placement to interested family and/or friends;
 2. The present needs of the individual as well as anticipated future needs;
 3. 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;

4. The ability of the placement to meet the individual's needs;
 5. The likelihood of the success of the placement, including a review of past clinical or diagnostic history;
 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 or parent to continue to provide care;
 8. The availability of continued funding of a current placement by a party other than the Division;
 9. The potential that the placement will be long term; and
 10. 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 Priority 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. 10:41-4.1(g), (h), and (i). 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. Alternate forms of communication shall be provided as appropriate. The written notification shall ask that the individual 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) 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 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.

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 Assistant Commissioner when the Assistant Commissioner determines that the following criteria have been met:
 - 1. The individual cannot be appropriately cared for in any existing Division placement including a developmental center;
 - 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 Assistant Commissioner.
- (b) All requests for funding shall be made through the Assistant Director. If the Assistant Director supports the request, he or she shall forward the request to the Assistant Commissioner. If the 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. The individual may appeal this decision in accordance with N.J.A.C. 10:46B-5.1.
- (c) The Assistant Commissioner shall communicate his or her decision to the 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 to a New Jersey community placement shall begin.
- (e) A transition IHP shall be developed to assist the person's transfer to a community placement in 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 a New Jersey community placement.
 - 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 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. At the same time, 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 priority waiting list and there is funding available;
 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. The Division shall announce that amount annually in the New Jersey Register at the beginning of each fiscal year.
- (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.
- (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) The Division's Chief Fiscal Officer shall ensure that a copy of the appropriate license, certification or approval is obtained annually.
- (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 if appealed.
- (c) Recommendations of placement changes where no specific offers of placement have been made shall be considered non-contested.
- (d) Except in emergencies, the appellant may request the Assistant Commissioner defer the placement of an individual pending resolution of an administrative appeal when the following circumstances apply:
 1. The appeal is received verbally or in writing 10 calendar days before the proposed placement and:
 - i. The appellant can demonstrate that the placement may place the individual at risk of abuse or neglect;
 - ii. The appellant has new information that was not known or available at the time the placement offer was made; or

- iii. The appellant can demonstrate that the placement shall significantly compromise the appellant's ability to have the Division action reversed or modified through the appeal process.
2. If the Assistant Commissioner agrees to defer the placement, the Division shall not be responsible to maintain the status quo unless the Division was funding the placement prior to the request to defer.