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DIVISION OF DEVELOPMENTAL DISABILITIES**Placement****Proposed Readoption with Amendments: N.J.A.C. 10:46B****Proposed Repeal: N.J.A.C. 10:46B-3.4**

Authorized By: Elizabeth Connolly, Acting Commissioner,
Department of Human Services.

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

Calendar Reference: See Summary below for explanation of
exception to calendar requirement.

Proposal Number: PRN 2017-184.

Submit written comments by October 20, 2017, electronically to
DDD-CO.LAPO@dhs.state.nj.us, or by regular mail or facsimile to:

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The agency proposal follows:

Summary

The Division of Developmental Disabilities (Division) proposes to readopt with amendments N.J.A.C. 10:46B, Placement. Chapter 46B establishes the standards and criteria for placements for eligible individuals. Pursuant to statute, the Division assists eligible individuals with appropriate functional services. See N.J.S.A. 30:4-25.4. Functional services include those services that are provided through a residential placement. See N.J.S.A. 30:4-25.1. The Division determines placements based upon each individual's unique needs and situation.

The Department of Human Services (Department) adopted Chapter 46B, Placement, effective January 17, 1995. The Department readopted Chapter 46B, effective January 17, 1996, pursuant to Executive Order No. 66 (1978). The Department repealed Chapter 46B and adopted it as new rules, effective December 20, 1999. The Department then readopted Chapter 46B, effective April 21, 2005. Chapter 46B expired on April 21, 2010, and the Department adopted the chapter as emergency new rules effective May 20, 2010, and as concurrent new rules, effective July 15, 2010. Chapter 46B was scheduled to expire on July 15, 2017. As the Division filed this notice of re-adoption with amendments with the Office of Administrative Law prior to that date, the expiration date of the chapter was extended 180 days to January 11, 2018. The Division has reviewed this chapter, and has found that with the proposed amendments, the rules are reasonable, necessary, and proper for the purpose for which they were originally promulgated.

The Division is currently in the process of transitioning from funding services through a contract cost reimbursement system to a Medicaid fee-for-service system. Consistent with this transition, the Division proposes to amend the scope of the rules to exclude individuals whose services are funded through Medicaid fee-for-service. Placement decisions for individuals with services funded through fee-for-service will be made in accordance with the applicable Medicaid waiver standards as part of the development of the individual's service plan. The rules would continue to apply to clients served through the current contract reimbursement model. The Division also proposes to amend the rules to add references to P.L. 2015, c. 192, as this law governs the management of out-of-State placements where it is applicable. The Division proposes to delete sections of the rules relating specifically to children, as children are now served by the Department of Children and Families. The existing rules require the approval of the Assistant Commissioner for all admissions to developmental centers, with an exception for short-term respite. The Division proposes to delete this exception, requiring Assistant Commissioner approval for all admissions. It should be noted that as a practical matter, individuals are no longer admitted to developmental centers. There has not been a developmental center admission since 2012. The remaining proposed

amendments are technical in nature. For example, the rulemaking would delete the definition for "self-determination process," as this program no longer exists. Similarly, the rulemaking would delete a reference to the Priority Deferred list, as this list no longer exists. The rulemaking also seeks to update the title "Division Director" with "Assistant Commissioner." In addition, the rulemaking would amend language to reflect that the Division is no longer structured by geographic region.

A summary of the rules proposed for re-adoption with amendments follows.

Subchapter 1. General Provisions

N.J.A.C. 10:46B-1.1 sets forth the purpose of the rules, authority, and establishes the standards and criteria for the placement of eligible persons.

N.J.A.C. 10:46B-1.2 sets forth the scope of the rules and provides that the chapter applies to eligible individuals. The Division proposes to amend the scope of the rules to exclude individuals whose services are funded through Medicaid fee-for-service. Placement decisions for these individuals will be made in accordance with the relevant Medicaid standards and as part of the development of the individual's service plan. The Division also proposes to delete a reference to the self-determination process, as this program is no longer in existence. The Division also proposes a technical amendment to correct a cross-reference to another chapter of the New Jersey Administrative Code.

N.J.A.C. 10:46B-1.3 provides the definitions used in the chapter. The Division proposes to update the title of the agency head by deleting the definition for "Director," and replacing it with "Assistant Commissioner." The definition of "Bureau of Guardianship Services" is proposed to be amended to reflect that this unit is now located within the Department. The Division proposes to delete the definitions for "challenge grant," and "Self-Determination Process," as these programs are no longer in existence. The Division also proposes to delete the definitions "child," and "local education agency," as children are no longer served by the Division. The definition of "Office of Education" is proposed to be deleted, as this office no longer exists. The Division also proposes to update the titles "Regional Assistant Director," and "Regional Administrator," to reflect that the Division is no longer structured by geographic region. Lastly, a technical amendment is proposed to the definition of "residential placement funded by the Division of Developmental Disabilities," to reflect that the Department now licenses facilities pursuant to N.J.A.C. 10:47.

Subchapter 2. Administration

N.J.A.C. 10:46B-2.1 sets forth the general standards for the administration of placements. The Division proposes to add a cross-reference to P.L. 2015, c. 192, as this law governs the administration of out-of-State placements, where applicable.

Subchapter 3. Placements

N.J.A.C. 10:46B-3.1 provides guidelines and parameters regarding the availability of placements. The Division proposes technical amendments to update New Jersey Administrative Code cross-references. The Division also proposes an amendment to update the title "Division Director" to "Assistant Commissioner." An amendment is proposed to require Assistant Commissioner approval for all admissions to developmental centers, without an exception for respite.

N.J.A.C. 10:46B-3.2 addresses residential placement and waiting lists. The Division proposes to delete subsections (c) and (d), relating to children. These sections are no longer applicable since the transfer of children to the Department of Children and Families.

N.J.A.C. 10:46B-3.3 describes the process for determining whether an individual is in need of emergency services. The Division proposes to delete a reference to the "Regional Administrator," as this title no longer exists.

N.J.A.C. 10:46B-3.4 sets forth provisions relating to the placement of children. The Division proposes to repeal this section, as the Division no longer serves children.

Subchapter 4. Placement Decisions

N.J.A.C. 10:46B-4.1 sets forth general standards for placement decisions. The Division proposes to add a cross-reference to P.L. 2015,

c. 192, as this law governs out-of-State placements, where applicable. The Division also proposes to delete an outdated New Jersey Administrative Code cross-reference, and to require alternate forms of communication when a placement is offered, as appropriate. An amendment is also proposed to delete an outdated reference to a waiting list category no longer in use. Amendments are also made to update language used to describe individuals served by the Division.

N.J.A.C. 10:46B-4.2 sets forth guidelines for placements in private institutions. Amendments are proposed to update the title “Division Director” to “Assistant Commissioner” and to update “Regional Assistant Director” to “Assistant Director.”

N.J.A.C. 10:46B-4.3 sets forth guidelines for private out-of-State placements.

Subchapter 5. Appeals

N.J.A.C. 10:46B-5.1 sets forth the provisions for filing an appeal of a placement decision. Amendments are proposed to update the title “Division Director” to “Assistant Commissioner.”

As the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

Redoption of these rules with amendments and a repeal will have a positive social impact. Placements are an important component in the array of services provided by the Division for eligible individuals. The rules proposed for redoption with amendments and a repeal explain to the public how placements are managed. The rules emphasize the Division’s responsibility to use reasonable professional judgment to consider the circumstances of each person in light of his or her unique situation when making placement decisions.

Economic Impact

Services provided by the Division are funded through annual appropriations passed by the Legislature and approved by the Governor. The Division does not anticipate that the proposed redoption of these rules with amendments and a repeal will result in any change to funding levels.

Federal Standards Statement

The rules proposed for redoption with amendments and a repeal provide that services in residential placements are provided through a Medicaid waiver. A Medicaid waiver is authorized by the Federal Centers for Medicare and Medicaid Services (CMS) to allow states to provide services in the community that would otherwise require institutional care. The rules proposed for redoption with amendments and a repeal do not exceed Federal standards. Therefore, a Federal standards analysis is not required.

Jobs Impact

The rules proposed for redoption with amendments and a repeal would neither generate nor cause the loss of any jobs.

Agriculture Industry Impact

The rules proposed for redoption with amendments and a repeal concern placements for Division clients, and, therefore, would have no impact on agriculture in the State of New Jersey.

Regulatory Flexibility Statement

The rules proposed for redoption with amendments and a repeal do not require a regulatory flexibility analysis because they do not impose reporting, recordkeeping, or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16.

Housing Affordability Impact Analysis

The rules proposed for redoption with amendments and a repeal concern placement for individuals served by the Division. Therefore, there is an extreme unlikelihood that the rules will evoke a change in the average costs associated with housing or with the affordability of housing.

Smart Growth Development Impact Analysis

The rules proposed for redoption with amendments and a repeal concern placement rules for individuals served by the Division. Therefore, there is an extreme unlikelihood that the rules will evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The Division does not anticipate the rules proposed for redoption with amendments and a repeal will have any impact upon the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for redoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:46B.

Full text of the rule proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10:46B-3.4.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

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 [involved in the Self-Determination Process] **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. [10:46-1.4] **10:46C** unless they meet the criteria of N.J.A.C. 10:46B-3.3, [“emergencies,”] **Emergencies**, 4.2, [“private] **Private** institutions,[]” or 4.3, [“private] **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.**

...
“Bureau of Guardianship” (BGS) means the unit within the [Division of Developmental Disabilities] **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.

...
[“Challenge grant” means funds provided to an agency which may be used in combination with other resources available to an individual which will meet the individual’s needs sufficiently to allow that individual to be removed from the priority waiting list.

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

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

...
[“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.]

...
[“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.]

...
[“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.]

“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, [or] 10:44C, or [is licensed by the Department of Health and Human Services under N.J.A.C.] 10:47 [and regulated by the Department of Human Services].

[“Self-Determination Process” means a service delivery system which allows an individual with developmental disabilities, in conjunction with his or her legal guardian, if any, family and selected friends to identify appropriate services and supports and determine how an individual budget, as well as personal, family and community resources, can be used to develop a service plan. The Self-Determination Process is based upon the principles of freedom to plan one’s own life, authority to utilize and manage resources, build one’s own support system and carries responsibility to contribute back to the community and the appropriate stewardship of public funds.]

SUBCHAPTER 2. ADMINISTRATION

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

(a)-(f) (No change.)

(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)-(k) (No change.)

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[(a) through (c)](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[-1.4], 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)-(e) (No change.)

(f) Approval by the [Division Director] **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[, unless the admission is for respite for a period of 30 days or less].

10:46B-3.2 Waiting lists

(a)-(b) (No change.)

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

(d) For any child residentially placed by the Division of Youth and Family Services, the Division of Developmental Disabilities shall assign that child to the priority category based on the date that the child was residentially placed by the Division of Youth and Family Services or no less than three years before the child reaches age 21, whichever date is earlier. The anticipated need for placement shall be reviewed annually at the time of the IHP.]

10:46B-3.3 Emergencies

(a) (No change.)

(b) When the [Regional Administrator] **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.-5. (No change.)

(c) When the [Regional Administrator] **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.-8. (No change.)

10:46B-3.4 (Reserved)

SUBCHAPTER 4. PLACEMENT DECISIONS

10:46B-4.1 General standards for placement decisions

(a)-(b) (No change.)

(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)-(f) (No change.)

(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]. **Alternate forms of communication shall be provided as appropriate**. 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)-(i) (No change.)

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

[(k)] (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 [competent] individual or legal guardian.

1.-2. (No change.)

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] **Assistant Commissioner** when the [Director] **Assistant Commissioner** determines that the following criteria have been met:

1.-3. (No change.)

4. Funding is available and authorized by the [Division Director] **Assistant Commissioner**.

(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] **Assistant Commissioner**. 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. The individual may appeal this decision in accordance with N.J.A.C. 10:46B-5.1.

(c) The [Director] **Assistant Commissioner** shall communicate his or her decision to the [Regional] Assistant Director in writing.

(d)-(f) (No change.)

SUBCHAPTER 5. APPEALS

10:46B-5.1 Placement appeals

(a)-(c) (No change.)

(d) Except in emergencies, the appellant may request the [Division Director] **Assistant Commissioner** defer the placement of an individual pending resolution of an administrative appeal when the following circumstances apply:

1. (No change.)
2. If the [Division Director] **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.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Home Care Services

Proposed Amendments: N.J.A.C. 10:60-1.1, 1.2, 1.3, 1.6, 1.7, 1.8, 1.9, 2.2, 2.3, 2.5, 3.1 through 3.9, 5.1 through 5.11, 11.2, and 10:60 Appendix A

Proposed Repeals and New Rules: N.J.A.C. 10:60-6

Proposed New Rules: N.J.A.C. 10:60-3.10

Proposed Repeals: N.J.A.C. 10:60-4, 7, 8, 9, and 10

Authorized By: Elizabeth Connolly, Acting Commissioner,
Department of Human Services.

Authority: N.J.S.A. 30:4D-1 et seq., and 30:4J-8 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Agency Control Number: 17-P-02.

Proposal Number: PRN 2017-181.

Submit comments by October 20, 2017, to:

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The agency proposal follows:

Summary

The Department is proposing amendments, repeals, and new rules to N.J.A.C. 10:60, Home Care Services, which addresses the provision of nursing facility level of care to Medicaid/NJ FamilyCare beneficiaries. These changes are the result of the combination of several waiver programs providing home and community-based services into the New Jersey 1115 Comprehensive Medicaid Waiver (the Comprehensive Waiver) and the implementation of sections of the Affordable Care Act.

Home and community-based services are home care services provided to beneficiaries who require a nursing facility level of care in order to allow them to remain in their home or community to delay or avoid the need for institutional care. These services are referred to as managed long-term services and supports (MLTSS) and are provided under managed care. Although this chapter addresses fee-for-service home care services, proposed N.J.A.C. 10:60-6, described below, provides general information regarding MLTSS provided under the New Jersey 1115 Comprehensive Medicaid Waiver. Receiving MLTSS requires the beneficiary to enroll in a NJ FamilyCare managed care organization (MCO) and receive case management services. Limited MLTSS services may be authorized during any waiting period between the determination of Medicaid/NJ FamilyCare eligibility and the enrollment of the beneficiary into an MCO, allowing the provider to be reimbursed on a fee-for-service basis. The inclusion of rules relating to MLTSS services in this chapter is meant to provide guidance regarding services provided during that waiting period.

Additional amendments include, but are not limited to, the rules addressing the accreditation and/or certification requirements of specific providers, authorization for services, and private duty nursing services.

The proposed amendments comply with Federal regulations and the approved Comprehensive Waiver and do not require a State Plan Amendment.

General Amendments

Throughout the chapter references to “Medicaid” have been changed to read “Medicaid/NJ FamilyCare” to clarify that beneficiaries found eligible for either program to receive services on a fee-for-service basis are eligible for the services described in this chapter.

Throughout the chapter all references to the “Department of Health and Senior Services” are replaced with references to the “Department of Health” to reflect the current name of that Department pursuant to P.L. 2012, c. 17.

Throughout the chapter all references to the “Division of Mental Health Services” and “DMHS” are replaced with references to the “Division of Mental Health and Addiction Services” and “DMHAS,” as appropriate, to reflect the current name of that Division within the Department of Human Services.

Throughout the chapter all references to the “Division of Youth and Family Services” and “DYFS” are replaced with references to the “Division of Child Protection and Permanency” and “DCP&P,” as appropriate, to reflect the current name of that Division within the Department of Children and Families.

Throughout the chapter the term “health maintenance organization or HMO” has been replaced with “managed care organization or MCO” to reflect the correct name of the organizations.

Throughout the chapter: minor non-substantive revisions of grammar, style, spelling, and punctuation are being proposed; unnecessary cross-references and any duplicative or otherwise unnecessary text are proposed for deletion; and names and/or contact information and addresses of agencies are updated, where indicated. Parentheses are eliminated and associated text is revised, as appropriate, to maintain the grammatical integrity of the sentence.

Summary of Specific Amendments

At N.J.A.C. 10:60-1.1(a), a proposed amendment clarifies that the chapter addresses home care services provided to individuals who receive services on a fee-for-service basis.

At N.J.A.C. 10:60-1.1(b)4, proposed amendments correct the list of services and programs that are contained in the chapter.

At N.J.A.C. 10:60-1.1(c), a proposed amendment corrects the list of providers that are eligible to participate as Medicaid/NJ FamilyCare providers of home care services.

N.J.A.C. 10:60-1.1(e) is proposed for deletion because the programs listed have been subsumed by the Comprehensive Waiver and the subchapters listed are proposed for repeal.

Recodified N.J.A.C. 10:60-1.1(e) is proposed for amendment to remove references to obsolete programs whose services are now included in the Comprehensive Waiver.

At N.J.A.C. 10:60-1.2, proposed amendments add the following definitions: “accreditation organization,” “activities of daily living (ADL),” “annual cost threshold,” “calendar day,” “complexity,” “continuous ongoing,” “DoAS,” “DHS,” “DOH,” “face-to-face encounter,” “hands-on personal care,” “health care service firm,” “independent activities of daily living (IADL),” “legally responsible relative,” “managed long-term services and supports (MLTSS),” “minimal assistance,” “moderate assistance,” “nurse delegation,” “skilled nursing interventions,” “telehealth technology,” and “therapy session” because they are used in this chapter.

At N.J.A.C. 10:60-1.2, proposed amendments delete the following definitions: “vase management,” “DHSS,” “health services delivery plan (HSDP),” “homemaker agency,” “hospice service,” and “long term care field office (LTCFO)” because they are no longer needed in the chapter because of agency name changes or changes in provider type or service delivery.

At N.J.A.C. 10:60-1.2, proposed amendments revise the following definitions to make the information more accurate: “home health