

services to individuals who are eligible to receive services from the Division.

SUBCHAPTER 2. REPORTING REQUIREMENTS

10:42A-2.1 General standards

(a) All staff shall be responsible to call 911 in a situation in which a prudent person could reasonably believe that immediate intervention is necessary to protect the life of a person receiving services at a facility for persons with developmental disabilities or traumatic brain injury, or to protect the lives of other persons at the facility or agency, from an immediate threat or actual occurrence of a potentially fatal injury, impairment to bodily functions, or dysfunction of a bodily organ or part, except as provided in (b) below.

(b) (No change.)

(c) (No change in text.)

(d) When the person suffering the life-threatening emergency has a DNR Order or POLST in effect, existence of the DNR Order or POLST does not relieve the staff member from the requirement to call 911. Staff shall call 911 if there is a life-threatening emergency but provide a copy of the DNR Order or POLST to emergency staff responding to the 911 call. Circumstances arising from a terminal condition for which a person is receiving hospice \*[or palliative]\* care shall not be considered a life-threatening emergency.

(e) If a person experiences chronic seizure activity, that person's licensed medical practitioner, who is not employed by the facility where the person resides, may provide a prescription or standing order to the facility defining when 911 should not be called because the person's seizure activity is not a life-threatening emergency.

(f)-(g) (No change.)

(h) Each facility covered by this chapter, except those facilities licensed under N.J.A.C. 10:44B, Standards for Community Care Residences for the Developmentally Disabled, shall provide training in life-threatening emergencies to all staff members through curriculum developed by the Division. Facilities licensed under N.J.A.C. 10:44B shall be trained by the Division.

(i) Each facility covered by this chapter shall maintain documentation of completion of staff training and provide it to the Department or Division upon request.

(j) Every 911 call and every failure to make a 911 call in the event of a life-threatening emergency shall be reported to the Department as an unusual incident and the facility shall maintain a copy of the unusual incident report.

SUBCHAPTER 3. MONITORING

10:42A-3.1 Enforcement

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

(d) The Assistant Commissioner shall determine whether a staff member has violated Danielle's Law, N.J.S.A. 30:6D-5.3. The Assistant Commissioner may ask the Department to conduct further investigation before rendering a decision.

(e)-(p) (No change.)

(a)

**DIVISION OF DEVELOPMENTAL DISABILITIES  
Placement**

**Readoption with Amendments: N.J.A.C. 10:46B  
Adopted Repeal: N.J.A.C. 10:46B-3.4**

Proposed: August 21, 2017, at 49 N.J.R. 2695(a).

Adopted: November 3, 2017, by Elizabeth Connolly, Acting Commissioner, Department of Human Services.

Filed: November 17, 2017, as R.2017 d.238, **without change**.

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

Effective Dates: November 17, 2017, Readoption;

December 18, 2017, Amendments and Repeal.

Expiration Date: November 17, 2024.

**Summary of Public Comments and Agency Responses:**

The Division of Developmental Disabilities (Division) received three comments from the public. A summary of the comments and the Division's responses follows:

COMMENT: Jean Arnone expressed her belief that "the excess capacity in our long-term care system should be used for placement of our more cognitively and behaviorally challenged adult DDD individuals."

RESPONSE: The Division notes that pursuant to Federal and State law, it seeks to ensure that individuals eligible for placement reside in the least restrictive setting that meets their individual needs.

COMMENT: William R. Testa, Executive Director, Arc Morris, asked the Division to reconsider excluding individuals served through the Medicaid fee-for-service system from the scope of the rules. The commenter believes that the Medicaid waiver does not address the intent of the current administrative rule and that the absence of clear written protocols will have a negative impact on stakeholders.

RESPONSE: The Division does not believe that excluding individuals served under fee-for-service from the scope of these rules will have a negative impact on stakeholders. The rules were developed to operate in a contract reimbursement system and do not take into account the individual choice available in a fee-for-service system. Individuals exercise their choice through the parameters provided for in the Medicaid waiver and the individual service planning process, as well as the Division's written policies and procedures governing the operation of Medicaid waivers, which provide clear written protocols. Therefore, the Division declines to make a change in response to the comment.

COMMENT: Valerie Sellers, CEO of the New Jersey Association of Community Providers, commented that the rules continue to refer to the Individual Habilitation Plan and Interdisciplinary Team instead of new terminology that has been identified.

RESPONSE: The Division notes that these terms are set forth in statute. Therefore, while the Division has utilized different terminology, these generic terms continue to be appropriate for use in the rules, and the Division will not make any changes in response to this comment.

**Federal Standards Statement**

The readopted rules and adopted amendments and 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 readopted rules and adopted amendments and repeal do not exceed Federal standards. Therefore, a Federal standards analysis is not required.

**Full text** of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 10:46B.

**Full text** of the adopted amendments follows:

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 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.

...  
 “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.

...  
 “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.

#### 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(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)-(e) (No change.)

(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)-(b) (No change.)

##### 10:46B-3.3 Emergencies

(a) (No change.)

(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.-5. (No change.)

(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.-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. 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)-(i) (No change.)

(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.-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 Assistant Commissioner when the Assistant Commissioner determines that the following criteria have been met:

1.-3. (No change.)

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)-(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 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 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 FAMILY DEVELOPMENT**

#### **Provisional Housing - Awaiting SSI/SSDI Eligibility (PHASE) Pilot Program**

**Adopted Repeals: N.J.A.C. 10:90-6.9 and 6.10**

**Adopted New Rule: N.J.A.C. 10:90-6.9**

Proposed: March 6, 2017, at 49 N.J.R. 399(a).

Adopted: October 30, 2017, by Elizabeth Connolly, Acting Commissioner, Department of Human Services.

Filed: November 20, 2017, as R.2017 d.242, , **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 30:1-12, and 44:10-53.

Effective Date: December 18, 2017.

Expiration Date: January 24, 2021.

#### **Summary of Public Comment and Agency Response:**

The following is a summary of the comments received and the Division’s responses. Each commenter is identified at the end of the comment by number that corresponds to the following list: