

9A:19-1.7 Authorization process

(a) The Secretary shall establish a review committee comprised of representation that may include the Office of the Secretary of Higher Education, the New Jersey Educational Facilities Authority, the New Jersey Department of Labor and Workforce Development, the New Jersey Department of Education, and any other State entity with technical expertise to evaluate project grant applications and make recommendations on funding.

(b) The Secretary shall examine the recommendations of the review committee and shall approve or disapprove a grant in accordance with N.J.A.C. 9A:19-1.6 and establish the amount of the grant in accordance with this subchapter.

(c) The total dollar amount of a grant approved for any county college shall not exceed \$4,000,000.

(d) The Secretary shall prepare and deliver a list of projects that meet the eligibility requirements set forth by the Securing Our Children's Future Fund and by this chapter that have been approved for funding by the Secretary, including the amount of each project grant, to presiding officers of each house of the Legislature on a date that both houses are in session. The list shall be deemed to be approved in its entirety, unless the Legislature adopts a concurrent resolution stating that the Legislature is not in agreement with the list within 60 days following the date of transmittal of the list to the Legislature. The payment of project grants on the list of projects shall be subject to the prior appropriation of sufficient funds pursuant to section 14 of the Act for total project amounts so listed.

(e) Upon authorization of a grant pursuant to (d) above, funding of the grant shall be contingent upon:

1. Appropriation of sufficient funds pursuant to P.L. 2018, c. 119, § 14 for the project set forth in the list of eligible projects sent to the Legislature;

2. Execution of a grant agreement with the Secretary; and

3. The county college's continued compliance with the grant agreement.

(f) Each recipient of a grant shall provide such information as the Secretary may request during the use of the grant and the process of the project.

(g) The Secretary may, consistent with the Act, allocate any balance of an approved grant to another approved grant, contingent on the following:

1. If a county college determines not to undertake a project for which a grant was awarded;

2. To adjust for actual project expenses in a manner consistent with the approved project;

3. If the project is not substantially completed, and the grant substantially disbursed, six months after the estimated construction completion date set forth in the grant application, as adjusted for any actual delay to the county college entering into a construction contract pursuant to (e) above; or

4. If a county college fails to comply with the provisions of the grant agreement as set forth in (e) above.

(h) No reallocation shall be made pursuant to (g) above if:

1. Delays are the result of Federal, State, or local government approvals or regulatory requirements not attributable to the county college; or

2. In the sole determination of the Secretary, there are other compelling and documentable reasons.

(i) Failure to comply with the grant agreement may result in the applicant's obligation to repay the grant funds.

9A:19-1.8 Payment of the grant

(a) The county college shall provide the matching funds on the schedule set forth in the grant agreement.

(b) If a county college fails to pay the matching funds as set forth in the grant agreement, the Secretary shall terminate the grant agreement whereupon no additional grant funds will be provided to the county college for the project.

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Community Care Program Waiting List Procedures

Readoption with Amendments: N.J.A.C. 10:46C

Adopted Repeal: N.J.A.C. 10:46C-2.4

Proposed: October 21, 2019, at 51 N.J.R. 1559(a).

Adopted: February 27, 2020, by Carole Johnson, Commissioner, Department of Human Services.

Filed: March 13, 2020, as R.2020 d.045, with a non-substantial change not requiring public notice and comment (see N.J.A.C. 1:30-6.3).

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

Effective Dates: March 13, 2020, Readoption;
April 6, 2020, Amendments and Repeal.

Expiration Date: March 13, 2027.

Summary of Public Comments and Agency Responses:

The Department of Human Services (Department) received comments from Thomas Baffuto, Executive Director, The Arc of New Jersey; William R. Testa, Executive Director, Arc Morris; Mercedes Witowsky, Executive Director, The New Jersey Council on Developmental Disabilities; Diana MTK Autin, Executive Co-Director, SPAN and Lauren Agoratus, M.A., NJ Coordinator-Family Voices @ SPAN; and Eileen Hurley, Chair, and Gabrielle Bohon, Vice-Chair, New Jersey Regional Family Support Planning Councils.

COMMENT: Two commenters asked the Division of Developmental Disabilities (Division) to reconsider its use of a chronological waiting list for access to the Community Care Program (CCP) based upon the date the individual was placed on the list, in favor of a needs-based approach that would prioritize access to the CCP based upon an individual's need.

RESPONSE: The Division understands the commenters' viewpoint but believes that the chronological model provides for equitable access to the CCP. The Division also notes that the rules provide for emergency access to the CCP when an individual is in need of emergency services in accordance with N.J.A.C. 10:46B. Also, during 2019, the Division outreached to all individuals on the Priority Waiting List (PWL) who were not enrolled in the Supports Program (SP), to offer access to that waiver program. Therefore, all individuals on the PWL have been offered some level of Division-funded services.

COMMENT: Two commenters raised concern that individuals must be Medicaid eligible in order to be eligible to receive Division-funded services. One of these commenters specifically raised concern about individuals who are not Medicaid eligible or who lose access to Medicaid through no fault of their own, in addition to raising concern about access to Division services for legal immigrants who, under Federal law, are ineligible for Medicaid until they have been living in the country for five years. The commenters believe there should be formal policy changes to allow these individuals to access Division-funded services.

RESPONSE: The Division notes that these concerns more directly involve the Determination of Eligibility, N.J.A.C. 10:46, rather than the rules at N.J.A.C. 10:46C. While the Division understands the concerns, the requirement of Medicaid eligibility allows the Division to provide services through Medicaid waivers with maximum Federal financial participation, in order to more effectively distribute funding to eligible individuals with developmental disabilities in New Jersey. Determination of Eligibility, N.J.A.C. 10:46, provides for time-limited services for individuals who are not Medicaid eligible, under certain circumstances. Finally, the Division routinely assists individuals in troubleshooting Medicaid eligibility matters and monitors potential Medicaid eligibility terminations to avoid temporary lapses, where possible.

COMMENT: Two commenters recommended that the Division conduct the level of care assessment to determine whether an individual is clinically eligible for enrollment on the CCP prior to placement on the waiting list, rather than at the time the individual is reached. Both commenters noted that it may be necessary to conduct another assessment

once the person is reached, but question having an individual wait for a service they may not be eligible to receive. One of the commenters recommended a policy that at least allows individuals on the waiting list an option to receive services through the SP.

RESPONSE: The Division believes that denying a person placement on the waiting list because they do not meet the clinical criteria at the time of placement is overly restrictive, because individuals who might have met that level of care at the time they were reached would have been denied placement on the waiting list. Additionally, as stated in response to a prior comment, in 2019 the Division outreached to all individuals on the PWL who were not enrolled on the SP, to offer them access to that waiver program.

COMMENT: Two commenters encouraged the Division to simplify the process for an individual to pay privately for services and to create or codify official policy concerning a private pay option. One of these commenters states that because the fee-for-service system boasts choice, individuals should have the choice to privately pay. The other believes that providing parameters regarding private payments will allow for more equitable access to the service system.

RESPONSE: The Division notes that this subject is beyond the scope of this rulemaking, which concern CCP waiting list procedures.

COMMENT: One commenter thanked the Division for amending the definition of "legal guardian" to reflect modern terminology. Another recommended the addition of a reference to a supported decision-making model to the definition of legal guardian.

RESPONSE: The Division thanks the commenters, and notes that, for purposes of the rules, the definition of legal guardian is necessary to reflect that a court-appointed guardian acts on the individual's behalf pursuant to law. The inclusion of this definition does not prohibit a person who does not have a court-appointed guardian from making his or her own decisions or utilizing a supported decision-making model if they choose to.

COMMENT: Two commenters support the language change from "has sole custody" to "acts as primary caregiver," to better reflect evolving families.

RESPONSE: The Division thanks the commenters for their support.

COMMENT: Three commenters expressed concern regarding a proposed amendment to allow the Waitlist Review Team (WRT) to meet on an as needed basis rather than monthly, believing this amendment to be too subjective. One of these commenters suggested that the Division establish a specific number of days in which the WRT should meet after receipt of a request to add an individual to the Priority Waiting List.

RESPONSE: The Division thanks the commenters and understands the concern. While the amendment was proposed to provide better efficiency, the Division has modified the change to continue the requirement for monthly meetings.

COMMENT: A commenter believes that the entire New Jersey Administrative Code should be examined in light of the system changes that have taken place from contract reimbursement to Medicaid fee-for-service. The commenter believes that the Division accomplished the transition very effectively but notes the area of policy coordination remains a very necessary project.

RESPONSE: The Division thanks the commenter but notes that the comment is beyond the scope of the rulemaking, which concern the procedures for the operation of the CCP Waiting List.

COMMENT: A commenter believes that an individual should be added to the waiting list when his or her oldest parent reaches age 55, rather than when the youngest parent reaches 55. The commenter believes that the current requirement is arbitrary and does not account for the burden that falls to the younger parent as the older one ages and may face declining health.

RESPONSE: The Division does not agree that the age requirement is arbitrary. The Division notes that at N.J.A.C. 10:46C-2.2(a)5, the rules provide that one of the criteria for placement on the PWL occurs when either parent 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, under certain conditions. The Division also notes that should either parent suffer declining health leading to a negative impact on the ability to care for a loved one, the family may seek emergency services.

COMMENT: A commenter believes that clarification is needed to address whether an individual enrolled in the SP can ever be eligible for the CCP.

RESPONSE: The Division believes that the rules are clear that an individual who is on the waiting list and enrolled in the SP may be eligible for the CCP if they are reached on the waiting list or are in need of emergency services. In particular, N.J.A.C. 10:46C-2.4(d) references individuals on the PWL who may already be enrolled on the SP.

COMMENT: A commenter raises concern about the availability of services for individuals who are residing in their own homes, as opposed to an out-of-home setting.

RESPONSE: The Division appreciates the commenter's concern but notes that it is beyond the scope of this rulemaking, which concerns waiting list procedures.

COMMENT: A commenter expressed concern about the transfer of the provision of services for individuals under 21 years of age from the Division to the Department of Children and Families (DCF), stating that this transfer has had a negative impact upon the quality of life for people with developmental disabilities and their families.

RESPONSE: The Division thanks the commenter for its input but notes that this comment goes beyond the scope of the rulemaking, which concerns procedures for the operation of the waiting list.

COMMENT: One commenter recommended an exhaustive study of N.J.A.C. 10:46B by stakeholders in order to review the definition of "emergency."

RESPONSE: The Division thanks the commenter but notes that this is beyond the scope of the rulemaking, which concerns operation of the waiting list.

COMMENT: A commenter inquired whether initiatives concerning the expansion of residential services could be memorialized or codified as a Departmental objective.

RESPONSE: The Division thanks the commenter for this question but notes that it is beyond the scope of this rulemaking, which concerns the operation of the waiting list.

COMMENT: A commenter inquired whether there should be an appeal when an individual is reached on the Priority Waiting List and is removed because they refuse services, believing that the services offered are inadequate.

RESPONSE: N.J.A.C. 10:46C-2.6 provides that an individual or legal guardian may appeal the appropriateness of services offered in accordance with N.J.A.C. 10:48.

COMMENT: A commenter inquired whether "single parent household" should be an additional criterion for consideration in determining an individual's placement on the PWL.

RESPONSE: In the context of the multiple criteria contained within N.J.A.C. 10:46C-2.2, the Division does not believe that a single-parent household alone rises to the level for placement on the PWL. The Division notes, however, that at N.J.A.C. 10:46C-2.2(a)5, a criteria for placement on the PWL exists where either parent is under age 55, and a health and safety risk exists because there is a single-parent household and more than 40 hours of monthly supports are required in order for that parent to maintain a full-time job, or the parent is primary caregiver to more than one person with disabilities who have significant care needs.

COMMENT: A commenter raised concerns about the repeal of the section concerning the criteria for placing children and young adults on the PWL, seeking clarification of whether this means that individuals will be placed on the waiting list only as adults. The commenter was concerned that the repeal would create difficulties for the Division to plan for the future needs of individuals with disabilities.

RESPONSE: This section was proposed for repeal because individuals under the age of 21 are now served by DCF. N.J.A.C. 10:46C-2.1, provides that individuals are informed of the CCP waiting list at the time of eligibility for Division services. N.J.A.C. 10:46, Determination of Eligibility, provides that an individual may apply for Division eligibility at 18 years of age, three years prior to being able to receive Division-funded services at age 21. Pursuant to these two provisions, individuals who have been determined functionally eligible for Division services may be placed on the waiting list at 18 years of age. Also, pursuant to N.J.A.C. 10:46, the Division provides transitional planning services to those aged 16 to 21 years. The Division continues to work to improve transitional

services to assist in planning for the future needs of individuals with disabilities.

COMMENT: A commenter asked why there are not rules about the use of the New Jersey Comprehensive Assessment Tool (NJCAT).

RESPONSE: This comment is beyond the scope of this rulemaking, which concerns the procedures for operation of the waiting list. The Division notes, however, that information about the NJCAT is available within the CCP and SP Policy and Procedures manuals, and on the Division's website.

COMMENT: A commenter expressed concerns that families are not aware of various aspects of the operation of the PWL and that various provisions are not being implemented.

RESPONSE: The Division operationalizes N.J.A.C. 10:46C through various means, including its Waiting List Unit. In addition, the Division's website contains information and resources regarding the waiting list. The Division also recently provided an overview about the waiting list at its Quarterly Update Meeting for Individuals, Families, and Providers. The PowerPoint presentation from this meeting is available on the Division's website.

Federal Standards Statement

A Federal standards analysis is not required because the rules readopted with amendments and a repeal are not subject to any Federal requirements or standards.

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

Full text of the adopted amendments follows (addition to the proposal indicated in boldface with asterisks *thus*; deletion from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 46C

COMMUNITY CARE PROGRAM WAITING LIST PROCEDURES

SUBCHAPTER 1. GENERAL PROVISIONS

10:46C-1.1 Purpose

(a) This chapter establishes criteria and procedures for allocating limited community-based services, based on the relative needs of the individuals waiting for Division services. In accordance with the Developmentally Disabled Rights Act, N.J.S.A. 30:6D-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)-(c) (No change.)

10:46C-1.2 Scope

This chapter shall apply to all individuals who are currently on the Community Care Program (CCP) Waiting List for CCP community-based services, or eligible individuals who may request such services in the future. Unless otherwise stated, this chapter does not apply to similar services that may be provided through the Supports Program.

10:46C-1.3 Definitions

The words and terms in this chapter shall have the following meanings unless the context clearly indicates otherwise.

... "Community Care Program" or "CCP" means a Division initiative, included in the Comprehensive Medicaid Waiver authorized by the Centers for Medicare and Medicaid Services under section 1115 of the Social Security Act, that funds community-based services and supports for adults with intellectual and developmental disabilities who meet the level of care for an Intermediate Care Facility for Individuals with Intellectual Disabilities.

... "Emergency" means an event in which an individual who is eligible for Division services is homeless or in imminent peril, as defined in N.J.A.C. 10:46B.

... "Individualized service plan" or "ISP" means a standardized service planning document developed based on an individual's assessed needs that identifies an individual's outcomes and describes the services needed

to assist the individual in attaining the outcomes identified in the plan. An approved ISP authorizes the provision of services and supports.

... "Legal guardian" means a person or agency appointed by a court of competent jurisdiction to make decisions on behalf of an individual determined by the court to lack decision-making capacity in certain areas as set forth at N.J.S.A. 3B:12-24.1.

... "Qualified provider" means a service provider who has met all qualifications for providing Division services through the CCP.

"Support coordinator" means the professional responsible for developing and maintaining the individualized service plan with the individual, his or her family, as applicable, and other interdisciplinary team members; linking the individual to needed services; and monitoring the provision of services included in the individualized service plan.

"Supports program" or "SP" means a Division initiative, included in the Comprehensive Medicaid Waiver authorized by the Centers for Medicare and Medicaid Services under section 1115 of the Social Security Act, that funds community-based services and supports for adults with intellectual and developmental disabilities.

...

SUBCHAPTER 2. WAITING LIST PROCEDURES

10:46C-2.1 Waiting list categories

(a) At the time of eligibility for Division services, the applicant shall be informed of the CCP waiting list.

(b) (No change.)

(c) The Division shall provide individuals on the Priority Waiting List with their numerical place on the waiting list annually.

10:46C-2.2 Procedure for adding an individual to a waiting list or changing the individual's waiting list category

(a) Satisfaction of one or more of the following criteria is required for assignment to the Priority Waiting List:

1. Both of the birth or adoptive parents are 55 years or older. When both parents or adoptive parents reach age 55, they shall be given the option to have the individual placed on the Priority Waiting List at the time of the annual ISP. In this instance, the date that the younger parent turns 55 shall be the date the individual is added to the Priority Waiting List. In situations where both parents are alive, but only one is the primary caregiver, it is only required that the parent who acts as the primary caregiver reach age 55 to have the option to have the individual placed on the Priority Waiting List at the time of the annual ISP;

2.-5. (No change.)

(b) (No change.)

(c) The individual, legal guardian, parent, or caregiver may request a reassessment of the waiting list assignment at any time. Requests for changes in the waiting list category shall be made in writing, or by alternate means used by the individual to communicate. If the request is approved, the change shall be made effective as of the date of the written request or request by alternate means.

1. The following types of requests for changes to the individual's waiting list category shall be processed by the Division waiting list coordinators and will not require a Waiver Review Team meeting:

i. Requests for the Priority Waiting List, under the following circumstances:

(1) Both birth or adoptive parents are over the age of 55 or the birth or adoptive parent, with whom the individual resides, is over the age of 55. In this instance, the date that the younger parent or the parent with whom the individual resides turns age 55 shall be the date the individual is added to the Priority Waiting List. If the date the parent turns 55 predates eligibility for functional Division services, the individual's effective date on the Priority Waiting List shall be the date of Division eligibility; or

(2) An individual living with a person other than the birth or adoptive parents, who is providing care voluntarily and without pay, and the caregiver can no longer provide care for the individual. The effective date of the addition to the Priority Waiting List will be the date of the written request, or request by alternate means used by the individual to communicate; and

ii. (No change.)

(d) All requests to be added to the Priority Waiting List, under (a) above or to change from the General Waiting List to the Priority Waiting List, other than those in (c)1 above will be processed through the WRT. The WRT shall be responsible to review the information in order to determine if the criteria for assignment to the Priority Waiting List are met. The WRT shall meet **[as needed, as determined by the waiting list coordinator,]** ***no less than monthly*** and shall have at least three members present to conduct business.

(e) Case management or the support coordinator, as applicable, shall provide all relevant information to the WRT. The WRT may request additional information and may request that a case manager or support coordinator visit the home.

(f) Case management or the support coordinator, as applicable, will inform the individual, legal guardian, parent, or caregiver that he or she has the option to attend the initial WRT meeting.

1. (No change.)

2. If the WRT feels further information is needed to determine if an individual may be added to the Priority Waiting List, case management or the support coordinator, as applicable, will obtain this information from the person making the request to add an individual to the Priority Waiting List in writing, or by alternate means used by the individual to communicate. Once received, the new information will be presented to the WRT. If, after the second review, the WRT agrees that the request meets all criteria as stated in (a) above, the effective date of the addition to the Priority Waiting List will be the date of the original written request, or request by alternate means used by the individual to communicate.

(g)-(h) (No change.)

(i) At the next available WRT, the individual, legal guardian, parent, caregiver, case manager or support coordinator, and invited family may make a presentation, verbal or written, regarding the individual's particular situation. The case manager or support coordinator shall document and present prior actions implemented to stabilize the individual in the individual's current situation. The individual, legal guardian, parent, or caregiver shall leave the meeting once they have presented their views. The WRT shall provide participants at the meeting alternate means of communication, as necessary.

(j) (No change.)

10:46C-2.3 Initial notification that an individual has been reached on the Priority Waiting List for Community Care Program Services

(a) When an individual is reached chronologically on the Priority Waiting List, the Division shall notify the individual or legal guardian in writing, or by alternate means used by the individual to communicate. In addition, the Division will contact the individual or legal guardian to further explain the process and discuss CCP and SP services and options.

1. An individual must meet the level of care (LOC) requirements for an Intermediate Care Facility for Individuals with Intellectual Disabilities to be eligible to enroll in the CCP. Individuals who do not meet the LOC requirements will receive services through enrollment in the SP.

2. Case management or the support coordinator, as applicable, will coordinate the development of a new individualized service plan, if needed.

(b) (No change.)

(c) Upon being reached on the Priority Waiting List, the individual or legal guardian shall be responsible for applying for all benefits for which the individual is entitled, in compliance with the provisions of N.J.A.C. 10:46, prior to receiving services from the Division. Application for benefits includes, but is not limited to, applying for the Medicaid DDD Community Care Program (CCP) and Social Security and Supplemental Security Income (SSI).

1. If the individual is determined to be ineligible for the Community Care Program, the individual shall be removed from the Priority Waiting List and shall be ineligible to receive services the Division provides through the CCP.

i. The individual shall remain eligible to receive those services the Division provides through the Supports Program, subject to annual appropriations.

2. If the individual is able to establish eligibility for the Community Care Program within six months of the date he or she was determined

ineligible, the individual shall be placed back on the Priority Waiting List with his or her original date of assignment to the Priority Waiting List.

3. If the individual is unable to establish CCP eligibility within six months, the individual shall be removed from the Priority Waiting List and may apply to the WRT for a new assignment to the Priority Waiting List, pursuant to N.J.A.C. 10:46C-2.2.

(d) In order for the Division to enroll an individual in the CCP, the Division must have funding available to provide waiver services for the individual and the individual must be eligible for functional services in accordance with the provisions of N.J.A.C. 10:46.

(e) When an individual is reached chronologically on the Priority Waiting List and accepts an offer of services, the individual or legal guardian must complete the CCP application, submit all required documentation, and participate in the development of an individualized service plan before services begin.

10:46C-2.4 Removal from the Priority Waiting List

(a) When an individual begins receiving CCP services and has complied with the Division's requirement of applying for the CCP and meeting all requirements of eligibility for those benefits, the individual's name shall be removed from the Priority Waiting List.

(b) If, upon being reached on the Priority Waiting List, an individual or legal guardian refuses any and all offers for CCP services, the individual's name shall be removed from the Priority Waiting List. The Division shall provide written notification, or notification by alternate means used by the individual to communicate, of the removal from the Priority Waiting List to the individual.

(c) If, upon being reached on the Priority Waiting List, the individual or legal guardian refuses to apply for the CCP or is found ineligible for the CCP, the individual's name shall be removed from the Priority Waiting List. The Division shall provide written notification, or notification by alternate means used by the individual to communicate, of the removal from the Priority Waiting List to the individual. In the case of CCP ineligibility, N.J.A.C. 10:46C-2.3(c) shall apply.

(d) If, upon being reached on the Priority Waiting List, the individual does not elect to enroll in the CCP, or is not otherwise eligible for CCP services, the Division will offer the individual the option to elect enrollment in the Supports Program, if the individual is not already enrolled in SP, and the individual's name shall be removed from the Priority Waiting List. The Division shall provide the individual, or his or her guardian, with written notification or notification by alternate means used by the individual to communicate, of the individual's removal from the Priority Waiting List.

(e) An otherwise eligible individual who has been removed from the Priority Waiting List may obtain access to CCP services in the future, if emergency criteria are present.

10:46C-2.5 Emergencies

(a) (No change.)

(b) When the Division determines that an emergency exists, the individual shall be administratively placed at the top of the Priority Waiting List.

10:46C-2.6 Appeals

(a) If the individual or legal guardian disagrees with the CCP waiting list categorization or the services offered, that decision may be appealed in accordance with N.J.A.C. 10:48.

(b) (No change.)