

**DIVISION CIRCULAR #8
(N.J.A.C. 10:46C)**

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES**

EFFECTIVE DATE: September 17, 2012

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(Rescinds DC #8 "Waiting List Procedures" effective April 18, 2011)

I. **TITLE:** **COMMUNITY CARE WAIVER WAITING LIST PROCEDURES**

II. **PURPOSE:** To establish the Division's practices concerning the management of its waiting list for Community Care Waiver services.

III. **SCOPE:** This circular applies to all Division components.

V. **GENERAL STANDARDS:**

Note: The remainder of this circular is the waiting list rules which appear at N.J.A.C. 10:46C.



Dawn Apgar, PhD, LSW, ACSW
Deputy Commissioner
Acting Assistant Commissioner

SUBCHAPTER 1 GENERAL PROVISIONS

10:46C-1.1 Purpose

- (a) This chapter establishes criteria and procedures for allocating limited in-home and out-of-home 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) The availability of such services shall be limited to the Division's funding in a given fiscal year. The basis of this chapter is to establish a means to prioritize service needs when there are insufficient funds, in order to provide the most appropriate services. The chapter represents an administrative process for the allocation of scarce resources among many individuals with similar needs and circumstances.
- (c) The waiting list assignment shall indicate only the need for services. The assignment shall not reflect the specific type of services needed. The individual's need for services changes over the course of the individual's life. The intent of this chapter is not to establish specific services to be provided, but to reflect only a general service need. Waiting list categories are general groupings based upon the level of priority. The date that the individual is assigned to the waiting list category shall be recorded.

10:46C-1.2 Scope

This chapter shall apply to all individuals who are currently on the Community Care Waiver Waiting List for in-home and out-of-home community-based services, or eligible individuals who may request such services in the future. This chapter does not apply to similar services, such as self-directed day habilitation, that may be offered using State funds only. Specific rules, which apply to children, are set forth at N.J.A.C. 10:46C-2.4.

10:46C-1.3 Definitions

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

“Abuse” means wrongfully inflicting, or allowing to be inflicted, physical, sexual, verbal, or psychological abuse or mistreatment upon an individual with a developmental disability.

“Caregiver” means an individual who is not a parent of an eligible person including, but not limited to, a spouse, child, sibling, grandparent, step-family member, aunt, uncle,

cousin, or legal guardian who, without monetary payment, cares for the eligible individual in the individual's home.

"Case management" means Division staff responsible for coordination of services across family, agency, and professional lines to develop and attain goals and objectives embodied in an individual's service plan. It involves monitoring of, and advocating for, the individual's needs with individual and family participation.

"Community Care Waiver" or "CCW" means the Home and Community Based Services (HCBS) Waiver authorized by the Centers for Medicare and Medicaid Services (CMS) under section 1915(c) of the Social Security Act for people with developmental disabilities.

"Day program" means a community-based service, which addresses an individual's need for daytime activities as described in the individual's service plan.

"Division" or "DDD" means the Division of Developmental Disabilities in the Department of Human Services.

"Emergency placement" means that placement, as defined in N.J.A.C. 10:46B, which is made when the individual is homeless or in imminent peril and the Division cannot provide adequate alternate services in the existing situation or provide for the individual's personal safety, and the Division has determined that there is no long-term placement available.

"Essential lifestyle plan" or "ELP" means a specific type of service plan that is consistent with the requirements of N.J.S.A. 30:6D-10 through 12, developed by the interdisciplinary team (IDT). It is an outcome-based planning tool that, at a minimum, identifies each individualized program or service requested by and provided to the individual, for which the individual demonstrates a need. It identifies the person or agency responsible for its implementation. The complexity of the service plan will vary according to the individual's interests, preferences, and needs.

"Exploitation" means the act or process of using an individual with a developmental disability or the individual's resources for another person's profit or advantage.

"In-home services" means Division services rendered to an individual residing in the individual's family home.

"Individual habilitation plan" or "IHP" means a specific type of service plan of intervention and action that is developed by the interdisciplinary team. It specifies both the prioritized goals and objectives being pursued by each individual and the steps being taken to achieve them. It 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.

“Interdisciplinary team” or “IDT” means an individually constituted group responsible for the development of a single, integrated service plan. The team shall consist of the individual receiving services, the individual’s parent or family member (if the adult desires that the parent or family member be present), legal guardian, those persons who work most directly with the individual served, and 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.

“Legal guardian” means a person or agency appointed by a court of competent jurisdiction or otherwise legally authorized and responsible to act on behalf of a minor or incapacitated adult, to assure provision for the health, safety, and welfare of the individual and to protect the individual’s rights.

“Medical needs” means the individual has a documented chronic or acute medical condition, which requires regular care to be provided to the individual.

“Neglect” means any of the following acts on an individual with a developmental disability:

1. Willfully failing to provide proper and sufficient food, clothing, maintenance, medical care, or a clean and proper home; or
2. Failure to do, or permit to be done, any act necessary for the well-being of an individual with a developmental disability.

“Out-of-home services” means Division services rendered to an individual residing in a community setting other than the individual’s family home (for example, group home, supervised apartment, community care residence, etc.).

“Qualified provider” means a service provider who has met all qualifications for providing Division services through the CCW.

“Regional offices” means that component of the Division, which provides intake, referral, and an array of community-based day and residential services. DDD regional offices serve four geographical areas of the State, which are: northern, upper central, lower central, and southern. Regional offices are sometimes referred to as Community Services Regional Offices.

“Service plan” means a written, individualized plan, consistent with the requirements of N.J.S.A. 30:6D-10 through 12, developed by the IDT. It is an outcome-based planning tool that, at a minimum, identifies each individualized program, support, or service requested by and provided to the individual, for which the individual demonstrates a need. It identifies the person or agency responsible for its implementation. The complexity of the service plan will vary according to the individual’s interests, preferences, and needs. The service plan format must be Division-approved but can be chosen from various types of plans, as determined by the requirements of the specific program, service, or support and can include, but is not limited to, the following types of plans: individual habilitation plan or essential lifestyle plan.

“Supports” means those services, other than residential services provided by the Division, which will help the individual remain in the individual’s living situation.

"Waiting list" means a roster of individuals who are eligible for functional services from the Division and who have expressed a general service need.

“Waiting list coordinator” means a Division staff member who maintains and amends the waiver waiting list.

"Waiver review team" or "WRT" means a group of five members responsible for the review of requests for assignment to the Priority Waiting List category. At least one member of the group shall be an advocate or family member of an individual with a developmental disability, except where an advocate or family member cannot be readily identified or is unavailable to participate. If there is no readily available advocate or family member, the WRT shall operate without them.

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 CCW waiting list.
- (b) The waiting list system shall consist of two categories: Priority Waiting List and General Waiting List.
 - 1. The waiting list category shall be specified at the time the individual is found eligible for functional services if the individual or legal guardian requests waiting list assignment at the time of application for services.
 - 2. If the individual does not request waiting list assignment at the time the individual is found eligible for functional services, the individual, legal guardian, parent, or caregiver may request an assignment, in writing, or by alternate means used by the individual to communicate, at any time.
- (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 IHP. 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 has sole custody reach age 55 to have the option to have the individual placed on the Priority Waiting List at the time of the annual IHP;

2. An individual living with a caregiver, other than the birth or adoptive parents, who is providing care voluntarily and without pay and the caregiver can no longer care for the individual;
 3. There is a clear risk of abuse, neglect, or exploitation;
 4. Either of the birth or adoptive parents is under age 55 and has a chronic and long-term physical or psychiatric and/or behavioral health condition or conditions, which significantly limits the birth or adoptive parents' ability to care for the individual with a developmental disability; or
 5. Either of the birth or adoptive parents 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 due to any one of the following conditions:
 - i. The individual's behavior or behaviors present a risk to self or others, which cannot be effectively managed by the parents, even with generic or specialized support arranged or provided by the Division;
 - ii. There are physical care needs, such as lifting or bathing, or medical needs that cannot be managed by the parent, even with generic or specialized supports arranged or provided by the Division;
 - iii. There is a single parent as the head of household who requires a minimum of 40 hours of specialized or generic supports from the Division, each month, in order to keep a full-time job; or
 - iv. There is a single parent as the head of household who is the primary caregiver to more than one person with a disability and those persons have significant direct care needs (for example, feeding, bathing, toileting, etc.).
- (b) Assignment to the General Waiting List shall be made by the Division when requested by an individual, legal guardian, parent, or caregiver, or if the individual does not meet the criteria for assignment to the Priority Waiting List.
- (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 regional waiting list coordinators and will not require a WRT 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 child's effective date on the Priority Waiting List shall be the date of Division eligibility;
 - (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; or
 - (3) An individual was residentially placed by the Division of Youth and Family Services (DYFS) or by a New Jersey Local Education Authority (LEA). The effective date of the addition to the Priority Waiting List will be governed by N.J.A.C. 10:46C-2.4; and
 - ii. Requests to be added to the General Waiting List.
 - (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. There shall be at least one WRT for each region, which shall meet no less than monthly and shall have at least three members present to conduct business.
 - (e) Case management shall provide all relevant information to the WRT. Additional information may be requested by the WRT, as needed, and a case management visit to the home may be required.
 - (f) Case management will inform the individual, legal guardian, parent, or caregiver of their option to attend the initial WRT meeting. At the initial meeting the case manager will present the request to the WRT.
1. If 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 written request, or request by alternate means used by the individual to communicate.

2. If the WRT feels further information is needed, case management will obtain this information from the requestor. 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) If the WRT determines that, based on the information provided, the request does not meet the criteria in (a) above, the requestor will be invited to the next available WRT to present their case. A decision on the request will be deferred pending the final presentation to the WRT.
- (h) No Priority Waiting List request shall be denied without the individual, legal guardian, parent, or caregiver being invited to present their views to the WRT. If the individual or legal guardian chooses not to attend the WRT meeting, the WRT may make a final determination based on the available information.
- (i) At the next available WRT, the individual, legal guardian, parent, caregiver, case manager, and invited family may make a presentation, verbal or written, regarding the individual's particular situation. The case manager shall document and present prior acts implemented by the Division 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. Alternate means of communication shall be provided, as necessary.
- (j) Following the WRT meeting, the WRT coordinator will inform the individual or legal guardian of whether the request meets the criteria stated in (a) above.
1. If the request is denied, the individual, legal guardian, parent, or caregiver will be notified, by letter describing the specific reasons for denial, within 30 days. If the individual, legal guardian, parent, or caregiver chose not to attend the WRT meeting, it shall be documented in the notification letter and the individual will remain on the General Waiting List with their original date. Individuals who are not on the General Waiting List will be added to the General Waiting List, effective the date of the written request, or request by alternate means used by the individual to communicate.
 2. If the request meets the criteria 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.

10:46C-2.3 Initial notification that an individual has been reached on the Priority Waiting List for Community Care Waiver 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, regional case management will contact the individual or legal guardian to further explain the process and offer the individual a choice between receiving in-home or out-of-home services.
1. For individuals who choose in-home services:
 - i. A service plan shall be developed with the individual and shall be approved by Division staff.
 - ii. If the individual is already receiving services, the individual will be given the option of retaining those services or seeking new services. If the services being received are not qualified-CCW services, the Division shall contact the provider to request that the provider become a qualified provider.
 - iii. An attempt to locate the requested services from providers shall be made. Respondents to the request for services will be checked for qualifications to ensure that they can provide the services requested.
 - iv. The services that have been secured for the individual will be recorded.
 2. For individuals who choose out-of-home services:
 - i. Division staff shall, to the best of their ability, based on resources and availability, attempt to find the most appropriate placement for the individual.
 - ii. Out-of-home services shall follow the procedures in N.J.A.C. 10:46B.
- (b) In the event that two or more individuals have the same assignment date to the Priority Waiting List:
1. The first criterion used to break the tie will be the initial date of assignment to the General Waiting List.
 2. If more than one individual has the same original date of assignment to the General Waiting List, the second criterion used to break the tie will be the date of eligibility for functional services.

- (c) Upon being reached on the Priority Waiting List, the individual or legal guardian shall be responsible for applying for all benefits for which they are 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 Waiver (CCW) and Social Security and Supplemental Security Income (SSI).
 - 1. If the individual is determined to be ineligible for the Community Care Waiver, the individual shall be removed from the Priority Waiting List and shall be ineligible to receive services the Division provides through the CCW.
 - i. The individual shall remain eligible to receive those services the Division provides through State-only funding, subject to annual appropriations.
 - 2. If the individual is able to establish eligibility for the Community Care Waiver 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 CCW 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 to enroll in the CCW, funding must be 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 CCW application and submit all required documentation including the development of a service plan before services begin.

10:46C-2.4 Children for whom services are requested

- (a) The Division shall assign any child placed residentially by a New Jersey Local Education Authority (LEA) to the Priority Waiting List. Placement on the list shall be 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. If the placement date by the LEA predates eligibility for functional Division services, the child's effective date on the Priority Waiting List shall be the date of eligibility for Division services. The anticipated need for services shall be reviewed annually at the time of the service plan review. The Division shall not assume responsibility for services until the child's educational entitlement ends.
- (b) The Division shall assign any child residentially placed by the Division of Youth and Family Services (DYFS) to the Priority Waiting List. Placement on the list

shall be based on the date that the child was residentially placed by DYFS. If the placement date by DYFS predates eligibility for functional DDD services, the child's effective date on the Priority Waiting List shall be the date of DDD eligibility. The anticipated need for services shall be reviewed annually at the time of the service plan review. The Division shall not assume responsibility for services until the child's 21st birthday or until the child's educational entitlement ends, whichever is later.

10:46C-2.5 Removal from the Priority Waiting List

- (a) When an individual begins receiving CCW services and has complied with the Division's requirement of applying for the CCW 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 CCW 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 CCW or is found ineligible for the CCW, 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 CCW ineligibility, N.J.A.C. 10:46C-2.3(c) shall apply.

10:46C-2.6 Emergencies

- (a) Emergencies shall be handled in accordance with N.J.A.C. 10:46B.
- (b) When the regional administrator determines that an emergency exists, the individual shall be administratively placed on the Priority Waiting List. The effective date on the Priority Waiting List shall be the date of the emergency determination.

10:46C-2.7 Appeals

- (a) If the individual or legal guardian disagrees with the CCW waiting list categorization or the services offered, that decision may be appealed in accordance with N.J.A.C. 10:48.
- (b) Upon the initial determination and each determination made thereafter, the individual or legal guardian shall be informed, in writing, or by alternate means used by the individual to communicate, that he or she has the right to appeal the categorization or the appropriateness of the services to be provided. With each notification, the individual or legal guardian shall be provided with a description of the appeals procedure.

