

The Commissioner has reviewed N.J.A.C. 8:45 and has determined that, pending the finalization of the anticipated rulemaking described above, the existing chapter remains necessary, proper, reasonable, efficient, understandable, and responsive to the purposes for which the Department originally promulgated it, as amended and supplemented over time, and should be readopted.

Therefore, pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 8:45 is readopted and shall continue in effect for seven years.

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Determination of Eligibility

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

Proposed: March 2, 2020, at 52 N.J.R. 390(a) (The notice of proposal would have expired on March 2, 2021, but was extended by Executive Order No. 127 (2020) and P.L. 2021, c. 103, to January 1, 2022).

Adopted: September 22, 2021, by Sarah Adelman, Acting Commissioner, Department of Human Services.

Filed: September 24, 2021, as R.2021 d.122, **without change**.

Authority: N.J.S.A. 30:1-12, 30:4-25.2, and 30:6D-23 et seq.

Effective Dates: September 24, 2021, Readoption;
November 1, 2021, Amendments.

Expiration Date: September 24, 2028.

Summary of Public Comment and Agency Response:

The Department of Human Services (Department) received comments from Mary Ciccone, Director of Policy, Disability Rights New Jersey (DRNJ). A summary of the comments and the Division of Developmental Disability's (Division) response follows:

COMMENT: The commenter recommends that the Division remove the reference to contribution to care from the rules proposed for readoption with amendments or in the alternative, include language modifications that clearly establish that the State contribution to care requirement applies to residential settings funded through contract reimbursement, and not to settings funded through Medicaid fee-for-service. The commenter believes that because the Division has moved more fully to the Medicaid fee-for-service model, the contribution to care reference is outdated and applies only to a small number of individuals. The commenter also believes that the inclusion of the reference to contribution to care in the rules proposed for readoption with amendments is confusing, as provider agencies use this language to apply to cost of care payments in the fee-for-service system. The commenter states that Federal rules govern payments in fee-for-service, and that some agencies are not applying the Federal rules properly. The commenter acknowledges that such misapplication is a separate issue.

RESPONSE: The Division thanks the commenter for its input. The Division agrees that the contribution to care requirement at N.J.A.C. 10:46D applies to individuals receiving services in residential settings funded through the contract reimbursement system, and that this number has been greatly reduced due to the transition to Medicaid fee-for-service. The Division notes, however, that the amendments include language at N.J.A.C. 10:46-1.1(c) providing that the contribution to care requirement applies to individuals receiving services in residential settings "funded through contract reimbursement." Pursuant to N.J.S.A. 30:4-25.9, this requirement continues to be a condition of eligibility for these individuals, and, therefore, is appropriate for inclusion in the rules readopted with amendments. That some providers may be using language for cost of care payments that are confusing or may be inappropriately applying Federal rules is outside the scope of this rulemaking. However, the Division is available to discuss the commenter's concerns and work with stakeholders, as appropriate, concerning this issue.

Federal Standards Statement

The rules readopted with amendments require that individuals maintain Medicaid eligibility in order to maintain eligibility to receive Division services, and that the Division provides these services through Medicaid waivers. Medicaid waivers are authorized by the Federal Centers for Medicare and Medicaid Services (CMS), pursuant to a program in which states seek authorization from CMS to provide a broad array of services, excluding room and board, that are not otherwise covered under the Medicaid program. The rules readopted with amendments 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. 10:46.

Full text of the adopted amendments follows:

SUBCHAPTER 1. GENERAL PROVISIONS

10:46-1.1 Purpose; authority

(a) Pursuant to N.J.S.A. 30:1-12, 30:4-25.2, 30:4-25.3, 30:4-25.9, 30:4-25.11, 30:6D-1 et seq. (P.L. 1985, c. 145), and 30:4-60 et seq. (P.L. 1995, c. 155), the Division of Developmental Disabilities, Department of Human Services (Division), intends this chapter to establish guidelines and criteria for determination of eligibility for services to individuals with developmental disabilities.

(b) (No change.)

(c) When an individual receives residential services from the Division funded through contract reimbursement, he or she is required to contribute to the cost of care and maintenance. The requirements and financial ability of the individual and that of his or her legally responsible relatives to contribute to the cost of care and maintenance are set forth at N.J.A.C. 10:46D, Contributions for Care and Maintenance Requirements. Pursuant to N.J.S.A. 30:4-25.9, the obligation to make payments is a condition of eligibility.

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

10:46-1.2 Scope

The provisions of this chapter shall apply to all individuals applying to the Division for eligibility under N.J.S.A. 30:4-25.1 et seq., and 30:4-165.1 et seq. Individuals under the age of 21, individuals who do not meet functional eligibility criteria, and individuals who are not Medicaid eligible, are not eligible to receive Division services, except for transitional planning as provided for at N.J.A.C. 10:46-2.1(h).

10:46-1.3 Definitions

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

"Application" means the form available at Division offices or on the Division website at: www.state.nj.us/humanservices/dd/services/apply/index.html (see N.J.A.C. 10:46-3.2(a)). The term includes any supporting documentation deemed necessary by the Division to make an informed determination with regard to applicant eligibility, including medical information. Supporting documentation may include, but is not limited to, educational, psychiatric, psychological, vocational, rehabilitation, medical, and social service records.

...

"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.

...

"Mental illness" means a current substantial disturbance of thought, mood, perception, or orientation that significantly impairs judgment, behavior, or capacity to recognize reality but does not include simple alcohol intoxication, transitory reaction to drug ingestion, organic brain syndrome, or developmental disability. N.J.S.A. 30:4-27.2 (P.L. 1987, c. 116.)

...

"Neurological Impairment (NI)" means a severe disorder of the central nervous system:

1. Evidenced by a medical diagnosis that is listed in the International Classification of Diseases, 10th revision, Clinical Modification (ICD-10-

CM), incorporated herein by reference, as amended and supplemented. The ICD-10-CM is available by contacting the Center for Disease Control and Prevention, National Center for Health Services, 3311 Toledo Road, Hyattsville, MD, 20782, or at www.cdc.gov; and

2. (No change.)

...

SUBCHAPTER 2. ELIGIBILITY CRITERIA

10:46-2.1 General eligibility

(a)-(e) (No change.)

(f) (No change in text.)

(g) When an individual receives residential services from the Division funded through contract reimbursement, he or she is also required to contribute to the cost of care and maintenance. The requirements and financial ability of the individual and that of their legally responsible relatives to contribute to the cost of care and maintenance are set forth at N.J.A.C. 10:46D, Contributions for Care and Maintenance Requirements.

Recodify existing (i)-(j) as (h)-(i) (No change in text.)

(j) It is the Division's policy to fund services in the State of New Jersey, except where the conditions stipulated at N.J.S.A. 30:6D-21.1 through 21.3 (P.L. 2015, c. 192) exist.

10:46-2.2 Residency

(a) An individual must be a resident of New Jersey before the Division can provide services. It shall be the responsibility of the individual applying for eligibility, or his or her guardian, to establish residency in the State of New Jersey. Residency shall be determined in the following manner:

1. (No change.)

2. When an individual applying for eligibility is residing in an out-of-State residential placement at the time of application for eligibility and the conditions stipulated at N.J.S.A. 30:6D-21.1 through 21.3 (P.L. 2015, c. 192) do not apply, she or he shall indicate on the application that it is their intention to return to New Jersey to receive in-State services no later than six months after eligibility has been established. If the individual does not return to New Jersey within six months of the determination of eligibility, the individual will not have met the residency requirement, and eligibility will be rescinded. If the individual is not yet 21 years of age, the individual will have no more than six months after their 21st birthday to return to New Jersey or the individual will not have met the residency requirement and eligibility will be rescinded.

(b) If an individual 21 years of age or older has already been determined functionally eligible for services and is residing in an out-of-State placement and the conditions stipulated at N.J.S.A. 30:6D-21.1 through 21.3 (P.L. 2015, c. 192) do not apply, the individual shall return to New Jersey within six months of notification from the Division or the individual will no longer meet the residency requirement and eligibility will be rescinded. An individual whose eligibility is rescinded under this section may reapply at any time if she or he returns to New Jersey and is living in the State as his or her primary residence.

1.-2. (No change.)

(c) Exceptions to (a)2 and (b) above may be made with the authorization of the Assistant Commissioner in one of the following two circumstances only:

1. (No change.)

2. The individual's services are reimbursed by Medicaid under the Community Care Program (CCP) and health and safety can be assured despite the individual not residing in the State.

(d)-(g) (No change.)

SUBCHAPTER 3. APPLICATION

10:46-3.1 Who may apply

(a) (No change.)

(b) Pursuant to N.J.S.A. 30:4C-4.4 (P.L. 2012, c. 16, sec. 158), the Division may continue to provide services to certain individuals under age 21 whom it is serving on January 22, 2013.

(c) (No change.)

10:46-3.2 How to apply

(a)-(e) (No change.)

(f) An application shall be deemed complete when there is sufficient information to make a determination of eligibility. An applicant has one year from the date of the submission of the initial application to submit all supporting documentation to constitute a complete application or a new application will be required.

SUBCHAPTER 4. DETERMINATION PROCESS

10:46-4.2 Notice requirements

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

(c) If the applicant is determined eligible, Division staff shall notify the applicant, in writing, within 10 working days of the determination and such notice shall include information regarding the service(s) deemed most suitable by the intake worker or the intake team.

1. (No change.)

2. The Division may also place the eligible individual's name on the Community Care Program Waiting List in accordance with N.J.A.C. 10:46C and/or any other applicable waiting lists. Nothing in this paragraph entitles an individual determined eligible for services to immediate enrollment on the Community Care Program or any other service for which there may be a waiting list.

(d) (No change.)

(a)

DIVISION OF MENTAL HEALTH AND ADDICTION SERVICES

Notice of Readoption

Advance Directives for Mental Health Care

Readoption: N.J.A.C. 10:32

Authority: N.J.S.A. 30:1-12, 30:9A-10, and 30:9A-21.

Authorized By: Sarah Adelman, Acting Commissioner, Department of Human Services.

Effective Date: September 24, 2021.

New Expiration Date: September 24, 2028.

Take notice that pursuant to N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 10:32, Advance Directives for Mental Health Care, were due to expire on November 24, 2021.

This chapter applies to State psychiatric hospitals listed at N.J.S.A. 30:1-7 and to the Division of Mental Health and Addiction Services (DMHAS). N.J.A.C. 10:32 is comprised of two subchapters. Subchapter 1, Scope and Purpose, describes the general purpose of the regulation, defines words and terms used throughout the chapter, and sets forth State psychiatric hospital policy and reporting requirements. Subchapter 2, Registry of Mental Health Care Directives, establishes procedures and responsibility for the creation and maintenance of a registry of mental health care directives by the DMHAS, and access to that registry by individuals, including registered declarants.

Take further notice that the need for amendments at N.J.A.C. 10:32 has been identified by the DMHAS; however, many of these changes are considered too significant to be made as part of this readoption. The anticipated amendments may include substantial amendments and/or recodifications in part, as may be appropriate, to the chapter to reflect the retention of the State psychiatric hospitals by the Department of Health following the return of the DMHAS to the Department of Human Services in accordance with Reorganization Plan 001-2018. Once the review is completed, a separate rulemaking containing proposed amendments and/or recodifications will be published in the New Jersey Register and a 60-day public comment period will be provided.

The Department of Human Services has reviewed the rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated, as required by Executive Order No. 66 (1978). Therefore, pursuant to N.J.S.A. 30:1-12, 30:9A-10, and 30:9A-21, and, in accordance with N.J.S.A. 52:14B-5.1.c(1), these rules are readopted and shall continue in effect for a seven-year period.