

New Jersey Administrative Code (N.J.A.C.) 10:46-2.2

- [TITLE 10. HUMAN SERVICES](#)
- [CHAPTER 46. DETERMINATION OF ELIGIBILITY](#)
- [SUBCHAPTER 2. ELIGIBILITY CRITERIA](#)

§ 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. An individual applying for eligibility shall be deemed a resident of the State if he or she lives in the State as his or her primary residence at the time of application for eligibility, unless the individual meets the criteria outlined in (a)2 below. If an individual has a guardian, the guardian must also live in the State as his or her primary residence at the time of application for eligibility, unless the guardianship determination does not include residential decision-making by the guardian.

2. When an individual applying for eligibility is residing in an out-of-State residential placement at the time of application for eligibility, 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the determination of eligibility, the individual will not have met the residency requirement, and eligibility will be rescinded.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birthday to return to New Jersey or the individual will not have met the residency requirement and eligibility will be rescinded.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, 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notification from the Division or the individual will no longer meet the residency requirement and eligibility will be rescinded. An individual whose eligibility is rescinded under this section may reapply at any time if she or he returns to New Jersey and is living in the State as his or her primary residence.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. If the individual's out-of-State residential placement is being funded by the Division, the individual may choose to either return to his or her family home in New Jersey and receive in-home supports, or shall be offered an in-State residential placement.

2. If the individual's out-of-State residential placement is not being funded by the Division, but the individual meets the emergency criteria listed in N.J.A.C. 10:46B, the individual shall be offered in-State emergency services.

(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. The Division has been unable to make an offer of placement within the six-month timeframe, and the individual and his or her guardian are fully cooperating and making substantial and documented good faith efforts to further the goal of locating in-State services. Substantial and documented good faith efforts include, but are not limited to: attending all transitional and planning meetings, participating in in-State program visits, completing all necessary waiver and other paperwork, and responding to all Division requests for information in a timely manner; or

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

(d) If an individual who has a guardian is admitted to services, and the guardian moves out-of-State, the individual may remain in Division services. Additionally, the guardian is free to request a discharge from services or an interstate transfer.

(e) If any individual is receiving services funded totally or partially by a public or private agency in another state, that individual shall not be considered a resident of New Jersey.

(f) For individuals applying for services whose guardian is in the U.S. military service, residency may be established when the guardian can produce permanent change of station orders to New Jersey.

(g) For individuals applying for services who are not U.S. citizens, the following must be satisfied to establish residency:

1. The individual must be a permanent alien resident, or his or her guardian must be a U.S. citizen or a permanent alien resident;
2. The individual or his or her guardian must be a resident of New Jersey; and
3. The individual must be New Jersey Medicaid eligible.