RULES OF

Department of Mental Health

Division 45—Division of Developmental Disabilities

Chapter 2—Eligibility for Services

Title **Page**

TITLE 9 – DEPARTMENT OF MENTAL HEALTH
Division 45 – Division of Developmental Disabilities
Chapter 2 – Eligibility for Services

9 CSR 45-2.010 Eligibility for Services From the Division of Developmental Disabilities

PURPOSE: This rule describes the process and terminology used to determine eligibility for Division of Developmental Disabilities services.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(1) Eligibility – Through this rule, the department intends to assist applicants for division services as they proceed through the eligibility determination process and to direct division staff so that they may assist applicants and individuals in expeditiously obtaining accurate, comprehensive evaluations and needed services. Specifically, the division intends to –

(A) Implement the concept of functional assessment for determining eligibility and to discontinue the practice of linking eligibility to a specific diagnosis;

(B) Provide equal access to eligibility determinations and habilitation services for all persons with developmental disabilities;

(C) Give specific consideration to eligibility for young children at risk of becoming developmentally delayed or developmentally disabled, so adhering to the prevention mission of the department and saving future state costs by maximizing each child's potential through early intervention and ameliorative services;

(D) Reduce administrative and bureaucratic barriers to obtaining comprehensive evaluations and services so that eligible persons expeditiously may access the array of services offered by the division;

(E) Accept responsibility for offering services to eligible persons and for assisting those persons – as well as those persons found ineligible – in accessing appropriate services from other state and local agencies, including other divisions within the department;

(F) Emphasize that other state, county, and local agencies also have a role to play in delivering coordinated, appropriate services to persons with developmental disabilities;

(G) Expedite and facilitate eligibility determination by –

1. Accepting as automatically eligible for screening those persons referred by other agencies which have found those persons eligible for their services;

2. Accepting, and not duplicating, assessment information provided by other private and public bodies, including schools, if regional offices determine that information to be reliable and appropriate;

3. Using the screening process only to facilitate an applicant's eligibility, not to screen the applicant out of eligibility except an applicant whose disability clearly was not manifested before age twenty-two (22);

4. Combining whenever possible the screening and assessment processes so that they are not necessarily two (2) separate steps in the comprehensive evaluation process, for example, finding applicants eligible at screening, or waiving screening in favor of determining eligibility through assessment; and

5. Making the application and comprehensive evaluation processes easy for applicants, for example, screening or assessing applicants in their homes as feasible or aiding them with transportation to regional offices as feasible;

(H) Ensure that eligibility decisions are based upon the following considerations, among others:

1. The best interest of the individual or applicant; and

2. The individual's or applicant's level of adaptive behavior and functioning, including the effect upon the individual's ability to function at either the same or an improved level of interpersonal and functional skills if services are denied or withdrawn; and

(I) Develop a training curriculum on the eligibility determination process and provide comprehensive initial and ongoing training for regional office personnel.

(2) Definitions – As used in this rule, unless the context clearly indicates otherwise, the following terms also mean:

(A) Applicant – A person who has applied for services from the division and/or that person's representative;

(B) Assessment – The process of identifying an individual's health status and intellectual, emotional, physical, developmental, and social functioning levels for use in determining eligibility or developing the service plan;

(C) Assessment team – Professionals employed by the Division of Developmental Disabilities with specialized training and experience in the field of developmental disabilities who determine the applicant's eligibility for services;

(D) Client – Any person who is placed by the department in a facility or program licensed and funded by the department or who is a recipient of services from a Regional Office (RO). Clients will be referred to as individuals throughout this rule;

(E) Cognitive or physical impairment–An impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques;

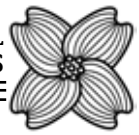
(F) Comprehensive evaluation – A study, including a sequence of observations and/or examinations of an individual, and/or a review of records such as medical and other relevant records, leading to conclusions and recommendations regarding eligibility.

1. For children from birth through age four (0–4), a comprehensive evaluation may include, but not necessarily be limited to, an assessment team's –

A. Assessment of the child using First Steps eligibility criteria, or review of evidence of one (1) of the at-risk factors set out in paragraphs (3)(A)1.–3. of this rule, coupled with a review of scores on the Vineland Adaptive Behavior Scales (Vineland);

B. Review of available educational and medical information;

C. Review of additional individualized assessment and interview results to provide evidence of cognitive or physical impairments likely to continue indefinitely, evidence of substantial functional limitations caused by cognitive or physical impairments, and evidence of a need for sequential and coordinated special services which may be of lifelong or



extended duration; and

D. Formulation of conclusions and recommendations.

2. For individuals ages five (5) and older, a comprehensive evaluation may include but not necessarily be limited to an interdisciplinary assessment team's –

A. Review of the results of the Missouri Adaptive Abilities Scale (MAAS);

B. Review of available vocational and medical information, and educational information;

C. Review of additional individualized assessment and interview results to provide evidence of cognitive or physical impairments likely to continue indefinitely, evidence of substantial functional limitations caused by cognitive or physical impairments, and evidence of a need for sequential and coordinated special services which may be of lifelong or extended duration; and

D. Formulation of conclusions and recommendations.

E. Designated representative – A parent, relative, or other person designated by an adult who does not have a guardian. The designated representative may participate in the development of the individual support plan at the request of, and as directed by, the individual;

(G) Developmental delay –

1. A delay, as measured and verified by appropriate diagnostic measures and procedures, which results in a child having obtained no more than approximately fifty percent (50%) of the developmental milestones and skills that would be expected of a child of equal age and considered to be developing within normal limits. The delay must be identified in one (1) or more of the following five (5) developmental areas: cognitive, speech or language, self-help, physical (including vision and hearing), or psychosocial; or

2. Demonstrated atypical development in any one (1) of the five (5) developmental areas, based on professional judgment of an assessment team and documented by –

A. Systematic and documented observation of functional abilities in daily routine;

B. Developmental history; and

C. Other appropriate assessment procedures which may include but are not necessarily limited to parent report, criteria-referenced assessment, and developmental checklist;

(H) Developmental disability – A disability which –

1. Is attributable to –

A. Intellectual developmental disorder, cerebral palsy, epilepsy, head injury, autism, or a learning disability related to a brain dysfunction; or

B. Any other cognitive or physical impairment or combination of cognitive or physical impairments;

2. Is manifested before the person attains age twenty-two (22);

3. Is likely to continue indefinitely;

4. Results in substantial functional limitations in two (2) or more of the following six (6) areas of major life activities: self-care, receptive and expressive language development and use, learning, self-direction, capacity for independent living or economic self-sufficiency, and mobility; and

5. Reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, habilitation, or other services which may be of lifelong or extended duration and are individually planned and coordinated;

(I) Eligible – Qualified through a comprehensive evaluation by the Division of Developmental Disabilities to receive services from the division, but not necessarily entitled to a specific service;

(J) First Steps – A program of the Department of Elementary and Secondary Education (DESE) offering coordinated services to Missouri families of children, birth to age three (3), who have delayed development or diagnosed conditions that are associated with developmental disabilities. First Steps is governed by 5 CSR 25-100.120 in accordance with Part C of the federal Individuals with Disabilities Education Act (IDEA);

(K) Individual support plan (ISP) – A document directed by the individual, with assistance as needed from a representative, in collaboration with a planning team. The ISP identifies strengths, capacities, preferences, needs, and desired outcomes of the individual. The ISP shall encompass a personalized mix of paid and non-paid services and supports that will assist him/her to achieve personally defined outcomes. Training, supports, therapies, treatments, and/or other services to be provided for the individual become part of the ISP;

(L) Individual support plan team (ISP team) – The individual, the individual's designated representative(s), the support coordinator, and representatives of services required or desired by the individual;

(M) Initial plan – A document that notifies the individual of eligibility for services and facilitates referral to case management;

(N) Intellectual developmental disorder – Significantly subaverage general intellectual functioning, at or below two (2) standard deviations below the mean, including a margin for measurement error when appropriate, as measured by an individually administered, comprehensive, and psychometrically sound test of intelligence. Intellectual developmental disorder originates before age eighteen (18) and is associated with significant impairment in adaptive behavior as assessed by both clinical evaluation and culturally appropriate, psychometrically sound measures;

(O) Intake – The process conducted prior to determination of eligibility by which data is gathered from an applicant;

(P) Legal representative – Parent of a minor child or legal guardian;

(Q) Logging – Recording in a uniform, consistent manner those dates and activities related to application, comprehensive evaluation, and other eligibility determination procedures as well as dates and activities related to applicant and individual appeals;

(R) Major life activities –

1. Self-care – Daily activities which enable a person to meet basic needs for food, hygiene, and appearance; demonstrated ongoing ability to appropriately perform basic activities of daily living with little or no assistance or supervision;

2. Receptive and expressive language – Communication involving verbal and nonverbal behavior enabling a person to understand and express ideas and information to the general public with or without assistive devices; demonstrated ability to understand ordinary spoken and written communications and to speak and write well enough to communicate thoughts accurately and appropriately on an ongoing basis;

3. Learning – General cognitive competence and ability to acquire new behaviors, perceptions, and information and to apply experiences in new situations; demonstrated ongoing ability to acquire information, process experiences, and appropriately perform ordinary, cognitive, age-appropriate tasks on an ongoing basis;

4. Mobility – Motor development and ability to use fine and gross motor skills; demonstrated ongoing ability to move about while performing purposeful activities with or without assistive devices and with little or no assistance or supervision;

5. Self-direction – Management and control over one's

social and personal life; ability to make decisions and perform activities affecting and protecting personal interests; demonstrated ongoing ability to take charge of life activities as age-appropriate through an appropriate level of self-responsibility and assertiveness; and

6. Capacity for independent living or economic self-sufficiency – Age-appropriate ability to live without extraordinary assistance from other persons or devices, especially to maintain normal societal roles; ability to maintain adequate employment and financial support; ability to earn a living wage, net (determined by the assessment team for each individual), after payment of extraordinary expenses caused by the disability; demonstrated ability to function on an ongoing basis as an adult independent of extraordinary emotional, physical, medical, or financial support systems;

(S) Markedly disturbed social relatedness – A condition found in children from birth through age four (0–4) and characterized by –

1. Persistent failure to initiate or respond in an age-appropriate manner to most social interactions; for example, absence of visual tracking and reciprocal play, lack of vocal imitation or playfulness, apathy, little or no spontaneity, or lack of or little curiosity and social interest; or

2. Indiscriminate sociability; for example, excessive familiarity with relative strangers by making requests and displaying affection;

(T) Missouri Adaptive Abilities Scale (MAAS) – A standardized, normative, and criterion-based instrument used to determine the existence and severity of substantial functional limitations of major life activities;

(U) Screening – Initial evaluation services, possibly including review by an assessment team of information collected during the intake and application processes to substantiate that the applicant is developmentally disabled or is suspected to be developmentally disabled and requires further assessment for eligibility determination;

(V) Substantial – At least two (2) or more standard deviations below the mean, taking into consideration the standard error of measure, on a standardized, norm-referenced measure;

(W) Substantial functional limitation – An inability, due to a cognitive or physical impairment, to independently perform a major life activity within expectations of age and culture; and

(X) Temporary action plan – A written plan authorizing additional time for the purpose of completing the comprehensive evaluation.

(3) Eligibility for services from the division is predicated on the applicant's either having an intellectual developmental disorder or developmental disability or being at risk of becoming developmentally delayed or developmentally disabled. The following criteria is used in carrying out comprehensive evaluations for determining eligibility for services from the division:

(A) Children From Birth Through Age Four (0–4). Individuals participating in the First Steps Program under DESE are eligible for services under the Division of Developmental Disabilities. The Division shall determine eligibility for those children not enrolled in First Steps based on one (1) of the following at-risk circumstances, when coupled with a score of at least one and one-half (1.5) standard deviations below the mean, taking into consideration the standard error of measure, in any one (1) area of a norm-referenced, standardized, and age-appropriate measure of adaptive function:

1. Receipt by the division of documentation, based upon an individualized assessment from a qualified developmental disabilities professional, that there is markedly disturbed social relatedness in most contexts which puts the child at risk of becoming developmentally delayed or developmentally disabled; or

2. Determination by a regional office that a child's primary caregiver has a developmental disability and that the developmental disability could put the child at risk of becoming developmentally delayed or developmentally disabled;

(B) Children Ages Five Through Seventeen (5–17).

1. Children scoring as follows on the MAAS shall be considered to have substantial functional limitations in two (2) or more areas of major life activity:

A. One and one-half (1.5) standard deviations below the mean in at least two (2) developmental areas; or

B. Two (2) or more standard deviations below the mean in only one (1) developmental area.

(C) Adults Ages Eighteen (18) and Older. Adults whose comprehensive evaluations, including results of the MAAS, indicate deficits in two (2) or more of the areas of major life activity shall be considered to have substantial functional limitations in those areas.

(4) Eligibility Process.

(A) Regional offices shall complete comprehensive evaluations within thirty (30) business days after receipt of valid applications and sufficient supporting medical, psychological, and/or educational reports. A Division of Developmental Disabilities staff member shall be designated to help ensure the eligibility determination process proceeds in a timely manner. The name of that individual shall be given to all applicants. This staff member shall have access to all necessary information relevant to the application for services.

(B) Individuals may apply for services only on application forms provided by the division.

1. By the end of the next business day after any referral, inquiry, or request for services, a regional office shall provide application forms and information about services offered by the division unless it is clearly evident that the inquiry, request, or referral has been made to the division inappropriately or is for a person who is clearly ineligible for services. In cases of evident ineligibility or inappropriate inquiries, requests, or referrals, regional offices shall refer individuals for whom services have been requested to appropriate agencies within five (5) business days after the inquiry, request, or referral.

2. For an individual's request for services to be considered, the regional office must receive a valid application for services. An application shall be valid only if signed or marked by the applicant. A mark must be witnessed.

3. Regional office staff shall contact the individual within ten (10) business days of receipt of an invalid application to obtain a valid application so that the eligibility process can continue.

4. If the regional office has not received an application within thirty (30) calendar days of the date it was provided to the individual, regional office staff shall contact the individual directly by telephone, electronic or regular mail, or in person to determine if the individual desires to continue the application for services and, if so, if assistance is needed in completing an application.

(C) A comprehensive evaluation includes –

1. A norm-referenced, standardized, and age-appropriate measure of adaptive function shall be used during assessment of children up to age five (5) to determine if substantial functional limitations exist; or

2. The MAAS shall be used during comprehensive

evaluation of individuals age five (5) and older to determine if substantial functional limitations exist.

(D) When "in-person" meetings, including assessments, are required, the regional office staff shall conduct such meetings in applicants' homes as feasible unless applicants request other sites. If meetings are at the Regional Office, the regional office staff shall work with applicants to secure transportation to the offices.

(E) If an applicant who claims eligibility due to intellectual developmental disorder has not been found to have substantial functional limitations in two (2) or more areas of major life activity under this rule, the assessment team shall consider any additional assessments or other relevant information provided by the applicant to determine if the applicant has an intellectual developmental disorder. One (1) or more standardized testing tools currently defined by the American Association on Intellectual and Developmental Disabilities shall be used in conducting adaptive behavioral assessment.

(F) If within thirty (30) business days of receipt of a valid application the assessment team finds the applicant ineligible for services, the regional office shall –

1. Provide, to the applicant, within one (1) business day of the decision, written notice of right to appeal the decision, a statement of the legal and factual reasons for the denial, a notice of the appeals process contained in 9 CSR 45-2.020, and a brochure which explains the appeals process;

2. Orally provide to the applicant, within one (1) business day of the decision, if possible, the reasons for ineligibility and an explanation of the applicant's right to appeal, along with information about how and to whom to request an appeal; and

3. Make referrals within five (5) business days of the decision to other agencies and monitor services received by the applicant for at least thirty (30) calendar days from the date of the ineligibility determination.

(G) If the assessment team cannot make an eligibility determination within thirty (30) business days of receipt of a valid application because the regional office has not received collateral data or other information critical to the determination, the assessment team shall develop a temporary action plan within that thirty- (30-) business-day period, and the office may take up to thirty (30) additional business days to determine eligibility.

1. For an applicant then determined eligible during the additional thirty- (30-) business-day period, the assessment team also shall develop the initial plan within the thirty (30) business days of the determination of eligibility.

2. For individuals needing immediate services, the service coordinator also shall develop an initial ISP within five (5) business days after the eligibility determination unless an ISP has already been developed.

3. For an applicant determined ineligible during the additional thirty- (30-) business-day period, the regional office shall provide written and oral notices as set out in paragraphs (4)(F)1. and 2. of this rule and shall make referrals to other agencies and monitor services received by the applicant as set out in paragraph (4)(F)3. of this rule.

(H) If the assessment team has received collateral data and all other information necessary for the determination and does not make a determination within thirty (30) business days, they have an additional five (5) business days to make a determination.

1. For an applicant then determined eligible, the office shall proceed as set out in paragraphs (4)(I)1.–3. of this rule.

2. For an applicant then determined ineligible, the office shall proceed as set out in paragraphs (4)(F)1.–3. of this rule.

(I) For an applicant determined eligible within thirty (30) business days of receipt of valid application –

1. The regional office shall provide written notice of eligibility and client status within three (3) business days of the determination;

2. The planning team shall develop an ISP within thirty (30) business days after the date of the eligibility determination; and

3. For individuals needing immediate services, the service coordinator also shall develop an initial ISP within five (5) business days after the eligibility determination.

(J) The Regional Office (RO) shall reassess individuals through comprehensive evaluation as needed. RO shall discharge individuals who are no longer eligible for services and individuals for whom division services are no longer appropriate.

1. Not later than sixty (60) calendar days before a reassessment, the regional office shall provide to the individual a written notice of the upcoming reassessment and of the possibility that division services may be discontinued.

2. If, as a result of the comprehensive evaluation, an individual is found ineligible or no longer in need of services, the regional office shall provide written and oral notice as set out in paragraphs (4)(F)1. and 2. of this rule and shall prepare a discharge plan which shall provide at least sixty (60) calendar days from the date of that plan for the individual to transition from division services into services from other agencies. The regional office and the individual's support coordinator shall monitor and assist with that transition.

(K) Regional office staff shall log the disposition of all applications, including eligibility determinations, appeals, and referrals to other agencies. Comprehensive evaluation activities noted throughout this rule shall be logged immediately or on the same business day.

(L) If an applicant or legal representative disagrees with an ineligibility determination, the determination may be appealed under procedures contained in 9 CSR 45-2.020

AUTHORITY: section 630.050, RSMo 2016. This rule was previously filed as 9 CSR 50-1.045. Original rule filed Oct. 2, 1991, effective May 14, 1992. Amended: Filed May 25, 1995, effective Dec. 30, 1995. Amended: Filed Oct. 25, 1995, effective April 30, 1996. Amended: Filed June 25, 1996, effective Feb. 28, 1997. Amended: Filed Feb. 1, 2012, effective Sept. 30, 2012. Amended: Filed Sept. 26, 2022, effective April 30, 2023. ***

**Original authority: 630.050, RSMo 1980, amended 1993, 1995, 2008.*

***Pursuant to Executive Order 21-09, 9 CSR 45-2.010, subsection (4)(I) was suspended from April 23, 2020 through December 31, 2021.*

9 CSR 45-2.015 Prioritizing Access to Funded Services

PURPOSE: This rule establishes how individuals otherwise eligible for services will be selected for funded services and programs administered by the Department of Mental Health, Division of Developmental Disabilities, when services cannot be provided to all eligible individuals with developmental disabilities in the state of Missouri through the funding that is appropriated.

(1) Definitions.

(A) Community services – Supports funded and purchased through the Department of Mental Health Purchase of Service (POS) system with general revenue appropriations to assist individuals who have an intellectual developmental disorder

and/or developmental disabilities to live in the community. Eligibility for MO HealthNet is not required. Community services includes services for people with autism spectrum disorders funded with general revenue appropriations and administered through the Autism Projects defined at 9 CSR 45-3.060.

(B) Community Support waiver – A set of services, not including residential services, for MO HealthNet eligible individuals who have an intellectual developmental disorder and/or a developmental disability who have been determined to otherwise require the level of care provided in an ICF/DD.

(C) Comprehensive waiver – A set of services, including residential services, for MO HealthNet-eligible individuals who have an intellectual developmental disorder and/or a developmental disability who have been determined to otherwise require the level of care provided in an ICF/DD.

(D) Division – Division of Developmental Disabilities.

(E) Intermediate care facility for intellectual developmental disorder and/or a developmental disability – Any facility certified under 42 CFR 440.150. These facilities are referred to as intermediate care facilities for developmental disabilities (ICF/DD) throughout this rule.

(F) Missouri Children with Developmental Disabilities waiver (MOCDD) – A set of services, not including residential services, for children under the age of eighteen (18) living with their parents, who will qualify for MO HealthNet by qualifying for the waiver, who have an intellectual developmental disorder and/or a developmental disability who have been determined to otherwise require the level of care provided in an ICF/DD.

(G) Partnership for Hope waiver – A set of services, not including residential services, for MO HealthNet-eligible individuals who have an intellectual developmental disorder and/or a developmental disability who have been determined to otherwise require the level of care provided in an ICF/DD. The Partnership for Hope is a county-based waiver operational in any Missouri county with a levy authorized under section 205.968, RSMo, whose board of directors has authorized funds to support the Partnership for Hope waiver or in any Missouri county approved by the Centers for Medicare and Medicaid Services for inclusion in this waiver.

(H) Prioritization of Need (PON) scoring – A process that assigns a score to the level of need for an individual, as set forth in 9 CSR 45-2.017. PON scoring is used to determine access to services when funding is limited and shall be applied to all individuals prior to participation in any of the following programs:

1. Comprehensive waiver;
2. Community Support waiver;
3. Missouri Children with Developmental Disabilities waiver (MOCDD); or
4. Community services funded with general revenue appropriations and purchased through the Department of Mental Health Purchase of Service (POS) system.

(I) Waiting list – A list of all people who have qualified for but are not currently receiving services from the division. The waiting list shall be subdivided into the following categories:

1. Children under the age of eighteen who are not eligible for MO HealthNet, who have needs that require the level of care in an ICF/DD, and who would otherwise be eligible for the MOCDD waiver;
2. Individuals who are eligible for MO HealthNet who have needs that require the level of care in an ICF/DD and are otherwise eligible for the comprehensive waiver; and
3. Individuals who are eligible for MO HealthNet who have needs requiring the level of care in an ICF/DD, who do not have an immediate need for residential services but have service needs beyond the scope of the Partnership for Hope waiver; and
4. Individuals who are eligible for MO HealthNet, who have needs requiring the level of care in an ICF/DD, whose needs can be met safely with services in the Partnership for Hope waiver.

(2) Prioritizing Access to State General Revenue-Funded Autism Project-Funded Services (defined at 9 CSR 45-3.060). People who are on this waiting list shall be prioritized for access to general revenue funded services based on PON score. When two (2) or more individuals have the same PON score, the individual(s) who has been on the waiting list the longest time shall be given priority.

(3) The following sections describe how the waiting list for home and community-based waivers will be established and managed when funding is limited and establishes the methods used to determine which waiver is most appropriate to meet the needs of individuals when funding becomes available.

(A) Individuals who reside in a participating Partnership for Hope waiver county who would otherwise require care in a ICF/DD may be considered for enrollment in the waiver if the individual is experiencing crisis or meets other priority criteria as outlined below in this rule. When participation in the Partnership for Hope waiver is limited by available funds, individuals experiencing a crisis will be served first. If more than one (1) individual is experiencing a crisis, the individual who has been waiting the longest will be served first. If no one is experiencing a crisis, then individuals meeting other priority criteria will be served. If more than one (1) individual meets priority criteria, the individual who has been waiting the longest will be served first.

1. To be considered for access based on a crisis, an individual must be experiencing one (1) of the following:
   A. Health and safety conditions pose a serious risk of immediate harm or death to the individual or others;
   B. Loss of primary caregiver support or change in caregiver's status to the extent the caregiver cannot meet needs of the individual; or
   C. Abuse, neglect, or exploitation of the individual.
2. To be considered for access to the Partnership for Hope waiver when no one in that county who is on the waiting list is experiencing a crisis, individuals meeting the following criteria will be served on the basis of length of time on the waiting list:
   A. The individual's circumstances or conditions necessitate substantial accommodation that cannot be reasonably provided by the individual's primary caregiver;
   B. The individual has exhausted both their educational and Vocational Rehabilitation (VR) benefits or they are not eligible for VR benefits and they have a need for pre-employment or employment services;
   C. Individual has been receiving supports (other than case management) from local funding for three (3) months or more and the services are still needed and the service can be covered by the waiver; and
   D. Individual living in a non-Medicaid funded residential care facility chooses to transition to the community and has been determined to be capable of residing in a less restrictive environment with access to Partnership for Hope waiver services.

(B) Individuals who are determined to meet emergency criteria as described in 9 CSR 45-2.017(1)(E) and who require out-of-home residential services or for whom out-of-home residential care is imminent, and whose needs cannot be met

with services and supports other than residential services or whose needs for services is anticipated to be in excess of the cost limitations of other waivers shall receive priority consideration to participate in the Comprehensive waiver.

1. Individuals on the waiting list shall be enrolled in the Comprehensive waiver according to the PON score, as set forth in 9 CSR 45-2.017 as funding becomes available.

2. When two (2) or more individuals have the same PON score, the individual(s) who has been on the waiting list the longest time shall be given priority access to the Comprehensive waiver.

3. When individuals on the waiting list are offered and refuse waiver services a new PON assessment shall be completed.

(C) Individuals on the waiting list whose needs can be met without residential services, whose needs can be met safely in the community, and whose annual service costs is anticipated to be less than the cost limits of those waivers, shall be prioritized for access in waivers other than the Comprehensive waiver.

(D) Children under the age of eighteen (18) who would otherwise require care in an ICF/DD, but who are not otherwise eligible for MO HealthNet because of parental income and/or assets, may be considered for participation in the MOCDD waiver, and shall be served from the waiting list as turnover occurs based on prioritized need. When two (2) or more individuals have the same PON score, the individual(s) who has been on the waiting list the longest time shall be given priority. When individuals on the waiting list are offered and refuse the service or services for which they were placed on the waiting list, they are removed from the waiting list. Should services be desired in the future, a new ISP and PON may be submitted.

(4) Program Turnover.

(A) Funds becoming available due to participants leaving (turnover) any programs listed under subsection (1)(I) shall first be used for individuals served in that program who have increased needs. When these needs are met, funds that become available from turnover may be used to enroll new individuals in the program.

(5) No individual shall receive services under more than one (1) home and community-based waiver at the same time, including home and community-based waivers operated by any other Missouri state agency. Any individual who is eligible for services under more than one (1) waiver and has priority access to services based on their score as set forth in 9 CSR 45-2.017, when funding is available under both programs, shall be offered a choice of the waiver that best meets their needs, including home and community-based waivers operated by any other Missouri state agency.

(6) An individual may receive services under a waiver and may also receive community services funded with general revenue appropriations and purchased through the Department of Mental Health Purchase of Service (POS) system with approval from the division director when there is a need that cannot be met with waiver services.

AUTHORITY: sections 630.050 and 633.110.2., RSMo 2016. Emergency rule filed Oct. 1, 2004, effective Oct. 15, 2004, expired April 15, 2005. Original rule filed March 31, 2006, effective Nov. 30, 2006. Amended: Filed Feb. 1, 2012, effective Sept. 30, 2012. Amended: Filed Sept. 26, 2022, effective April 30, 2023.*

**Original authority: 630.050, RSMo 1980, amended 1993, 1995, 2008 and 633.110, RSMo 1980, amended 2011.*

9 CSR 45-2.017 Utilization Review Process

PURPOSE: This rule formally establishes a statewide utilization review process to: ensure individuals eligible for division services with similar needs are treated consistently and fairly throughout the state; ensure each individual's annual plan accurately reflects the individual's needs; ensure levels of service are defined and documented within the outcomes of each individual's plan; prioritize need for services; and ensure accountability of public funds.

(1) Definitions.

(A) Authorization – Approval notice to a provider that a specific amount of service at a specific rate may be provided to an individual.

(B) Budget – The total cost of services and supports funded through the division recommended or approved to meet an individual's needs identified in an Individualized Support Plan. Services and supports paid for outside of the department billing system are excluded from the budget.

(C) Department – Department of Mental Health.

(D) Division – Division of Developmental Disabilities.

(E) Emergency criteria consist of one (1) or more of the following:

1. The individual is in immediate need of life-sustaining services (food and shelter, or protection from harm) and there is no alternative to division funding or provision of those services;

2. The individual needs immediate services in order to protect self or another person from imminent physical harm;

3. The individual is residing in an intermediate care facility for persons who have developmental disabilities (ICF/DD) or a skilled nursing facility (SNF) and has been assessed as able to live in a less restrictive arrangement in the community, the individual wants to live in the community, and appropriate services and supports can be arranged through the waiver;

4. The individual had been receiving significant services through division waiver-funded programs and services, is evaluated to still need the significant level of services, but is no longer eligible for the program or services due to age; or

5. The individual is in the care and custody of the Department of Social Services, Children's Division, which has a formal agreement in place with the division to fund the costs of waiver services for the specific individual or for individuals who are in a Voluntary Placement Agreement (VPA).

(F) Missouri Adaptive Ability Scale (MAAS) – A norm-referenced, standardized assessment of functional ability. The MAAS shall be used to determine number and severity of functional limitations for eligibility, prioritization of need score, and rate setting.

(G) Person-centered planning process – A process directed by the individual, with assistance as needed from a guardian, public administrator, the responsible party, or other person as freely chosen by the individual. The process may include other individuals freely chosen by the participant who are able to serve as important contributors to the process. The person-centered planning process enables and assists the individual to access a personalized mix of paid and non-paid services and supports that will assist him/her to achieve personally defined outcomes and the training, supports, therapies, treatments,

and/or other services become part of the ISP.

(H) Prioritization of need (PON) score – A component of the MAAS that quantifies the level of impairment of an individual and is used to determine priority of access to services. The PON score is expressed on a one (1) to five (5) scale with five (5) being the highest possible score.

(I) Responsible party – The parent(s) of a minor child, spouse, court appointed guardian, public administrator, or any other person who has legal authority to make decisions for a person served by the division.

(J) Senate Bill 40 County Developmental Disability Boards (SB40 Board) – County boards established pursuant to section 205.970, RSMo, to provide services with voter approved tax levies to residents of that county who are handicapped persons as defined in sections 178.900 and 205.968, RSMo.

(K) Individualized Support Plan (ISP) – A document directed by the individual, with assistance as needed from a representative, in collaboration with a planning team. The ISP identifies strengths, capacities, preferences, needs, and desired outcomes of the individual. The ISP shall encompass personalized mix of paid and non-paid services and supports that will assist him/her to achieve personally defined outcomes. Training, supports, therapies, treatments, and/or other services to be provided for the individual become part of the ISP.

(L) Service/Support – Informal and formal means of meeting needs identified in the ISP.

(M) Utilization Review (UR) – A formal process at the regional office to review PON, proposed ISPs, and budgets and make recommendations for approval, modification, or denial of the requested services. The regional director or assistant regional director has the authority to review and approve recommended services and may designate individuals to review and approve recommended services. The authority to deny or modify requested services lies solely with the regional director or assistant regional director.

(2) Following the establishment of eligibility for division services in accordance with 9 CSR 45-2.010, the person-centered planning process begins. An ISP is developed through discussion with the individual and/or guardian and with input from others as directed by the individual and/or guardian. The ISP, budget, and PON (if applicable), are then submitted to UR, and a copy of the ISP, budget, and PON (if applicable), is provided to the individual and/or guardian.

(A) A PON score is necessary when there is a request to begin participation in any waiver.

(B) A new assessment of PON shall be completed when an individual on a waiting list experiences a change in personal circumstances, environment, or family situation impacting level of need.

(C) UR is necessary under the following circumstances:

1. When individuals will be receiving funded services for the first time;

2. When the individual's ISP and budget is amended by adding new services or increasing the dollar amount of a specific service;

3. When individuals who are participating in the Partnership for Hope waiver move from a participating county into one that does not participate in the Partnership for Hope waiver; or

4. Any other situation at the discretion of the regional director.

(D) UR is not necessary when there is no change to the ISP or budget, but the ISP may be reviewed at the discretion of the regional director.

(E) In emergency situations as described in paragraphs (1)(E)1.-5. of this rule, the regional director has the authority to approve an increase in a ISP to protect the health and safety of an individual and to subsequently report the decision to the support coordinator who will develop an ISP amendment.

(3) Following implementation of the initial ISP and annually thereafter, two (2) months prior to the proposed ISP and budget implementation, the service coordinator shall meet with the individual, the individual's family, and as appropriate the individual's responsible party to prepare an ISP and budget with justification for the individual's support needs.

(A) The ISP and budget shall be agreed to and the ISP shall be signed by the individual and/or responsible party.

(4) One (1) month prior to the proposed ISP and budget implementation, the service coordinator shall submit the signed ISP to the regional director or the regional director's designee for approval. Plans submitted that include services with a start date less than thirty (30) days from the implementation date shall not expedite approval timelines.

(A) If the ISP and budget submission to UR shall otherwise be delayed due to the inability of the service coordinator to obtain the signature of the individual or responsible party, then the ISP and budget shall be forwarded to UR without the signature and a copy of the ISP and budget shall be mailed to the individual or responsible party.

(5) UR shall recommend for approval a service/support for inclusion on a prioritized waiting list if the service/support meets each of the following criteria:

(A) Need for the service/support is documented in the ISP as necessary for the individual's health, safety, and/or independence and alternative funding or programs are not available to meet the need;

(B) Need for the service/support is specifically related to the person's disability (i.e., not something that would be needed regardless of the person's disability); and

(C) Individuals evaluated with needs meeting emergency criteria receive highest priority in receiving funding for services.

(6) The division shall maintain a waitlist for entry into the Division of Developmental Disabilities waiver- funded services. The regional office enters individuals on a prioritized waiting list when services requested in an approved ISP require entry into a waiver. Individuals evaluated with needs meeting emergency criteria receive highest priority in receiving funding for services.

(7) UR shall review the ISP, budget and PON (when required) within six (6) business days of receipt. A PON score based on the emergency criteria will be reviewed by the regional director or their designee for verification.

(A) If sufficient information is submitted, the regional director or the designee may approve the ISP and budget. The regional director or designee has five (5) business days to render a decision.

(B) If more information is needed or changes are necessary in the budget or service authorization associated with a ISP, that information shall be requested from the service coordinator, who has ten (10) business days to respond. Upon receipt of the requested information or following the conclusion of these ten (10) business days, the regional director or designee will then have five (5) business days to render a decision.

(8) Following the decision by the regional director or designee, a decision letter and the completed ISP and budget shall be provided within ten (10) business days of the decision to the individual and/or responsible party, service coordinator, and provider(s). If the regional director disapproves or modifies an ISP and budget, the regional director shall include in the decision letter the reason(s) for the disapproval or modification and must provide information on rights to appeal.

(9) The individual or responsible party may appeal the decision, in writing or verbally, to the regional director or assistant regional director within thirty (30) calendar days from the date of the decision letter.

(A) If necessary, appropriate staff shall assist the individual or responsible party in making the appeal.

(B) The regional director or designee may meet with the individual or responsible party and any staff to consider any information relevant to the final decision and to hear any comments or objections related to the decision.

(C) Within ten (10) business days after receiving the appeal, the regional director or designee shall notify the individual or responsible party in writing of the decision.

(10) When the decision, as set forth in section (8) above, results in any individual being denied service(s) based on a determination the individual is not eligible for the service(s) or adversely affects a waiver service for an individual, the individual and/or responsible party may appeal in accordance with the procedures set forth in 9 CSR 45-2.020(3)(C).

(A) An individual and/or responsible party participating in a Division MO HealthNet/Medicaid waiver program has appeal rights through both the Department of Mental Health and the Department of Social Services. Those individuals may appeal to Department of Social Services before, during, or after exhausting the Department of Mental Health appeal process. Once the appeal process through Department of Social Services begins, appeal rights through the Department of Mental Health cease. Individuals appealing to the Department of Social Services must do so in writing within ninety (90) calendar days of written notice of the adverse action to request an appeal hearing. Requests for appeal to the Department of Social Services should be sent to MO HealthNet Division, Constituent Services Unit, PO Box 6500, Jefferson City, MO 65102-6500, or call Constituent Services Unit at 1 (800) 392-2161.

(11) If an individual and/or responsible party timely files an appeal of a decision, services currently being provided under an existing ISP will not be suspended, reduced, or terminated pending a hearing decision unless the individual or legal representative requests in writing that services be suspended, reduced, or terminated.

(A) The individual and/or responsible party may be responsible for repayment of any federal or state funds expended for services while the appeal is pending if the hearing decision upholds the director's decision.

(12) The service coordinator shall provide guidance to the individual, family, and the responsible party about any alternative resources potentially available to support needs that are not approved through the UR process.

(13) New services/supports that result in an increase in the total budget shall not begin before the ISP and budget are approved through the UR process and approved by the regional director or designee, except in an emergency situation approved by the regional director or designee. Services approved due to an emergency situation may not exceed sixty (60) calendar days. An extension of up to an additional sixty (60) calendar days may be requested in writing and may be approved in writing at the discretion of the regional office director.

(14) Budgets are determined by the total cost of all services and supports paid through the billing system of the department. Services and supports paid for outside of the department billing system are excluded.

(A) When multiple family members are receiving division services, this shall be noted. All of the budgets shall be considered together in the utilization review process in order to have a comprehensive picture of all services/supports going into a single home so the necessary level of services can be determined. This does not require each family member's ISP be on the same plan year, but does require all of the current supports in the home be considered.

(B) Applicable Medicaid State Plan services shall be accessed first when the individual is MO HealthNet-eligible and the services will meet the individual's needs.

(15) A review, modification in units, or denial of a service should not delay the implementation of other services in the plan.

(16) Other ISP and budget reviews shall continue to be completed by the service coordinator and/or service coordination supervisor, as directed by the regional director.

AUTHORITY: sections 630.050 and 633.110.2., RSMo 2016. Original rule filed March 31, 2006, effective Nov. 30, 2006. Amended: Filed Feb. 1, 2012, effective Sept. 30, 2012. Amended: Filed Sept. 27, 2022, effective April 30, 2023.***

**Original authority: 630.050, RSMo 1980, amended 1993, 1995, 2008 and 633.110, RSMo 1980, amended 2011.*

***Pursuant to Executive Order 21-09, 9 CSR 45-2.017, paragraph (3)(B)2. was suspended from April 23, 2020 through December 31, 2021.*

9 CSR 45-2.020 Appeals Procedures for Service Eligibility Through the Division of Developmental Disabilities

PURPOSE: This rule prescribes procedures for appealing decisions on service eligibility.

(1) As used in this rule, the following terms mean:

(A) Appeals referee – shall be an impartial, neutral, trained decision maker not employed with the Division of Developmental Disabilities;

(B) Applicant – a person suspected to have an intellectual developmental disorder or developmental disability and for whom application has been made for regional office services or the person's representative;

(C) Client – a person who receives services of the Division of Developmental Disabilities or their representative. Clients will be referred to as individuals hereafter in this rule;

(D) Representative – shall include but not necessarily be limited to the applicant's/individual's legal guardian, parent of a minor applicant, or individual and protector (as defined by 9 CSR 45-3.040); and

(E) Supervisor – a supervisor of service coordinators in a regional office or a unit director in a developmental disability facility.

(2) Any person who is suspected to have an intellectual developmental disorder or developmental disability shall be eligible for initial diagnostic and counseling services through the regional office.

(A) These rules are to be liberally construed in order to assure that all claims are decided on the merits of the individual's claims and in the individual's best interests. The rules regarding the time and manner in which a person may appeal shall be liberally interpreted to decide claims on the merits.

(B) Decisions as to an applicant's eligibility for services, or an individual's eligibility for continued services, shall be based on an assessment of the applicant's/individual's eligibility as determined by Missouri statutes. In making their determinations, staff (for example, members of the assessment team, service coordinators, regional director or their designee, appeals referees, and the director of the Missouri Department of Mental Health (DMH)) shall consider but need not be limited to each of the following factors and the appeals referee shall include in his/her written decision findings of fact and conclusions of law on each criterion considered:

1. The best interest of the individual/applicant;

2. The person's level of adaptive behavior and functioning, including the effect upon the individual's ability to function at either the same or an improved level of interpersonal and functional skills if support from the DMH and contracting private providers is withdrawn or denied; and

3. Whether the individual is eligible for services under the laws of Missouri.

(3) If the applicant, based upon the initial diagnostic evaluation or comprehensive evaluation, or if a individual, based upon a reevaluation, has been determined ineligible for regional office services, the applicant or individual may appeal the decision on eligibility.

(A) Appropriate, effective notice of the eligibility determination shall be given to the applicant/individual. This notice shall be given in writing, and verbally, when possible, on a standard DMH form within ten (10) business days of the ineligibility decision. The written notice shall include a specific statement of the factual and legal reasons for ineligibility, a statement that the applicant/individual has the right to appeal that decision and the name, address, and telephone number of the regional office staff person to contact for further information about the decision, the appeals process, or both. In addition to the notice, the applicant/individual shall receive a brochure which explains the appeals process and the appeals procedures open to the applicant/individual. If there is any question about the applicant's/individual's ability to understand either the form or the brochure after s/he receives his/her notice in person or by telephone, the Missouri Division of Developmental Disabilities staff person shall verbally explain the basis for the denial of eligibility and the appeals process to the applicant/individual and shall assist the applicant/individual in initiating an appeal and contacting Missouri Protection and Advocacy Services. Notice shall be hand-delivered or shall be sent by registered or certified United States mail, return receipt requested, and given verbally, where appropriate, at least thirty (30) calendar days prior to the effective date of the proposed action.

(B) The applicant or individual may appeal the decision, in writing or verbally, to the regional office staff within thirty calendar (30) days from the date of receiving the written notice.

1. If necessary, appropriate staff shall assist the applicant/individual in making the appeal.

2. The applicant or individual may present any information relevant to the appeal. The regional director or their designee shall meet with the applicant/individual and any staff to attempt to resolve differences and receive information on the matter.

3. Within ten (10) business days after receiving the appeal, the regional director or their designee shall notify the applicant verbally, when possible, and in writing of his/her findings and decision and of the right to appeal, including notice of where and how to direct appeal.

(C) If the applicant/individual disagrees with the decision of the regional director or their designee, the applicant/individual, verbally or in writing, may notify the regional office staff within thirty (30) calendar days of the date of receipt of the decision that the applicant/individual wishes to present the case to an appeals referee. If the applicant/individual verbally requests an appeal to the appeals referee, regional office staff shall send the person a notice via registered or certified mail, return receipt requested, verifying that the applicant/individual has verbally requested an appeal. The regional office staff also shall forward the verification notice to the appeals referee.

1. The referee shall be an employee of the department. The referee shall hear all appeals.

2. The appeals referee shall notify the applicant or individual in writing of the date, time, and location of the hearing before the referee. Effective notice of the hearing shall be given at least thirty (30) calendar days prior to the date of the hearing and shall contain a statement of the issues to be determined at the hearing. If any party has good cause for postponement or rescheduling, the request shall be granted. Absent good cause, the hearing shall be held no later than sixty (60) calendar days from the date of the claimant's request for a hearing. The hearing shall be held at a location convenient for the individual/applicant, usually the regional office identified in the appeal.

3. The applicant/individual shall have the right to representation either by an attorney or another advocate. Upon written notice that an individual is represented by an attorney/advocate, the attorney/advocate shall be provided with copies of notices, and the like. Upon request of the individual/applicant or his/her attorney/advocate, copies of all documents relevant to the appeal shall be made available without charge within five (5) business days of the date of the request. An individual or his/her attorney/advocate shall have the right to inspect and copy all relevant Missouri DMH documents, including but not necessarily limited to department rules and applicant/individual records if release is authorized in writing by the applicant/individual, including third-party individual records in the custody of the department that were utilized in making the decision on eligibility.

4. The appeals referee shall rest his/her decision solely on the evidence presented at the hearing. The referee shall not review any documents concerning the applicant's/individual's eligibility that are not properly submitted on the record during the hearing. The appeals referee, in addition, shall not discuss the applicant's/individual's appeal with any party other than in the context of the hearing, questioning witnesses on the record, or both. The referee shall assure that the claimant receives a full and fair hearing. After the conclusion of the hearing, the referee shall issue a written decision, including findings of fact and conclusions of law, within thirty (30) calendar days of the close of the hearing. The decision shall be mailed to the regional office and to the claimant and his/her attorney/advocate, if any, by registered or certified mail, return receipt requested. Upon request of the claimant, regional office staff may be consulted by the claimant for an explanation of the

decision and its implications. The decision also shall contain a brief description of further appeal rights provided by this rule. Within thirty (30) calendar days of the decision, the referee shall have the authority to vacate or amend his/her decision at the request of the claimant or his/her attorney/advocate or the head of the regional office with notice to the others for good cause shown.

5. The head of the regional office shall have the burden of proof and burden of going forward to either establish that the applicant does not meet the state's statutory criteria for services eligibility or that the individual has so improved that s/he no longer would benefit from the level of services which had been previously provided.

6. During the hearing, the applicant/individual or the head of the regional office shall have the right to speak on behalf of self, to present witnesses, to be represented by an attorney or other advocate, to submit any additional information, and to cross examine witnesses who have appeared on behalf of the regional office.

A. If the applicant or individual is represented by legal counsel, the claimant or his/her counsel shall notify the head of the regional office within ten (10) calendar days from the date that counsel is retained for the hearing.

B. If the applicant or individual is represented by legal counsel at the hearing, the head of the regional office shall request representation from the attorney general's office. The request for representation should be made to the attorney general's office as soon as practicable. Notice to the applicant/individual and attorney that the attorney general's office will appear in the case should be made at least five (5) calendar days before the hearing.

7. Unless otherwise provided in this rule, the hearing shall be conducted by the provisions of Chapter 536, RSMo.

8. The referee shall electronically record the hearing. The recording of the hearing shall be kept for one (1) year after the date of the hearing. The recording shall be available to the individual/applicant or his/her attorney/advocate or the regional office director for purposes of review for further appeal.

(D) Either party may appeal the decision of the appeals referee to circuit court as provided by Chapter 536, RSMo. For purposes of appeal, the recording of the hearing before the appeals referee shall be transcribed at the expense of the party appealing but shall be without cost to the applicant/individual who is indigent as determined by the department or the circuit court.

(E) Pending an administrative appeal or appeal before circuit court if the appeals referee's decision is appealed, the department shall not reduce or terminate the applicant's or individual's services or benefits. No applicant's or individual's benefits or services shall be reduced or terminated until appeal procedures are exhausted.

(4) If an individual disagrees with the decision made by regional office staff regarding eligibility for a specified service through the division, except referral for community placement from a department developmental disability facility, the individual may appeal the decision.

(A) The appeal may be presented orally or in writing to the appropriate supervisor within thirty (30) calendar days from receipt of the oral or written notice, whichever is earlier.

1. If necessary, the appropriate staff shall assist the individual in making the appeal.

2. The individual may present, and the supervisor shall accept and consider, any information relevant to the appeal. The supervisor may meet with the individual and any staff to discuss and resolve differences.

3. Within ten (10) business days after receiving the information presented by the individual, the supervisor shall notify the individual in writing and verbally of the supervisor's finding and decision and the right of the individual to appeal to the regional office director or their designee.

(B) If the individual disagrees with the decision of the supervisor, the individual shall be entitled to utilize the same appeal procedures to the regional office director or their designee, the appeals referee, and the circuit court as provided in section (3) of this rule.

AUTHORITY: section 630.050, RSMo 2016. This rule was previously filed as 9 CSR 50-3.705. Original rule filed April 17, 1987, effective Oct. 1, 1987. Amended: Filed Jan. 15, 1993, effective Aug. 8, 1993. Amended: Filed May 25, 1995, effective Dec. 30, 1995. Amended: Filed Feb. 1, 2012, effective Sept. 30, 2012. Amended: Filed Sept. 27, 2022, effective April 30, 2023.*

**Original authority: 630.050, RSMo 1980, amended 1993, 1995, 2008.*