

*** Proposed New Rule – June 6, 2011 ***

5123:2-1-08 **Waiting lists.**

(A) Purpose

The purpose of this rule is to set forth the requirements for waiting lists established by a county board under section 5126.042 of the Revised Code.

(B) Definitions

- (1) "Alternative services" means the various programs, services, and supports, regardless of funding source, other than home and community-based services, that exist as part of the developmental disabilities service system and other service systems including, but not limited to:
 - (a) Services provided directly by a county board;
 - (b) Services funded by a county board through providers;
 - (c) Services provided and funded outside the developmental disabilities service system;
or
 - (d) Services provided at the state level.
- (2) "County board" means a county board of developmental disabilities.
- (3) "Date of request" means the earliest date and time of any written or other documented request for home and community-based services. The request, including the date and time of request, shall be included in an individual's record maintained by a county board. Documentation of the date of request may include the ODJFS 02399 "Request for Medicaid Home and Community-Based Services" signature date.
- (4) "Department" means the Ohio department of developmental disabilities.
- (5) "Emergency status" means an individual is facing a situation that creates for the individual a risk of substantial self-harm or substantial harm to others if action is not taken within thirty days. "Emergency status" may result from, but is not limited to, one or more of the following:
 - (a) Loss of present residence for any reason, including legal action.
 - (b) Loss of present caretaker for any reason, including serious illness of the caretaker, change in the caretaker's status, or inability of the caretaker to perform effectively for the individual.
 - (c) Abuse, neglect, or exploitation of the individual.

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- (d) Health and safety conditions that pose a serious risk to the individual or others of immediate harm or death.
 - (e) Change in emotional or physical condition of the individual that necessitates substantial accommodation that cannot be reasonably provided by the individual's existing caretaker.
 - (6) "Home and community-based services" means medicaid-funded home and community-based services specified in division (B)(1) of section 5111.87 of the Revised Code and provided under the medicaid components the department administers pursuant to section 5111.871 of the Revised Code.
 - (7) "ICFMR" means intermediate care facility for the mentally retarded, including a state-operated developmental center.
 - (8) "Individual" means a person with a developmental disability or for purposes of giving, refusing to give, or withdrawing consent for services, his or her guardian in accordance with section 5126.043 of the Revised Code.
 - (9) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.
 - (10) "Medicaid case management services" means medicaid-covered case management services under the state medicaid plan.
- (C) There shall be no waiting list for the following services:
- (1) Medicaid state plan services. Medicaid-eligible individuals who are assessed and determined to have a need for medicaid state plan services, including medicaid case management services, shall receive services within ninety days of the date that the need for such services has been documented on the individual's individual service plan in accordance with applicable law, which determination shall be included in the individual's record maintained by the county board.
 - (2) Home and community-based services for individuals already enrolled in a home and community-based services waiver administered by the department. Individuals enrolled in a home and community-based services waiver administered by the department who are assessed and determined to have a need for the services covered by the waiver shall receive services within ninety days of the date that the need for such services has been documented on the individual's individual service plan in accordance with applicable law, which determination shall be included in the individual's record maintained by the county board.
 - (3) Home and community-based services for children who are subject to a determination under section 121.38 of the Revised Code and require the services.

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- (4) Home and community-based services for individuals who are transferred to a home and community-based services waiver pursuant to paragraph (H) of this rule.
- (D) Waiting list for home and community-based services
- (1) If a county board determines that available resources are not sufficient to meet the needs of all individuals who request home and community-based services, the board shall establish a waiting list for the services.
 - (2) When an individual requests home and community-based services for which there is a waiting list, a county board shall:
 - (a) Absent objection by the individual, place the individual's name on the waiting list;
 - (b) Inform the individual, the individual's guardian, and in accordance with section 5126.044 of the Revised Code, the individual's family, as applicable, of the individual's position on the waiting list;
 - (c) Identify the individual's immediate needs; and
 - (d) Assist the individual in identifying and obtaining alternative services that are available to meet those needs, including applying for medicaid. An individual who accepts alternative services may remain on the waiting list.
 - (3) An individual's date of request is the controlling date for placement on a waiting list for home and community-based services and shall be documented at the time of any such request.
 - (4) When there is a dispute regarding an individual's date of request, the individual or a person with legal authority to act on behalf of the individual, may appeal under procedures set forth in paragraph (J) of this rule.
 - (5) When an individual relocates or expresses a desire to relocate from one county to another county, any waiting list for home and community-based services shall be reordered in the new county based on the individual's date of request for such services.
 - (6) When home and community-based services for which there is a waiting list become available, a county board shall offer the services to the individual next scheduled on the waiting list to receive the services subject to a determination of the individual's eligibility for the services. If the individual refuses the services, the individual may remain on the waiting list in his or her current position.
 - (7) Annually, a county board shall:

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(a) Review the current status, reassess the service needs, and notify the individual, the individual's guardian, and in accordance with section 5126.044 of the Revised Code, the individual's family, as applicable, of the individual's date of request.

(b) Provide contact information for a person at the county board who can provide resource information to address, to the extent possible, immediate needs of the individual and who can respond to questions about the notice.

(8) If at any time it is determined that an individual on a waiting list for home and community-based services is not eligible for home and community-based services, the county board shall remove the individual's name from the waiting list and shall assist the individual with contacting other agencies/programs for which the individual may be eligible. Individuals removed from the waiting list have a right to due process as set forth in paragraph (J) of this rule.

(E) Emergency status

The individuals who may be placed on a waiting list include individuals with emergency status. An individual with emergency status shall receive first priority for home and community-based services. No individual may receive priority for home and community-based services pursuant to paragraph (F) of this rule over an individual placed on a waiting list with emergency status. When two or more individuals have emergency status pursuant to this paragraph, the county board shall offer the services to such individuals in the order they are placed on the waiting list based on their date of request.

(F) Priority categories

Except as provided in paragraph (E) of this rule, a county board shall give priority to all of the following in accordance with the assessment component approved under section 5123.046 of the Revised Code of the county board's plan developed under section 5126.054 of the Revised Code:

(1) Refinancing of supported living and family support services. An individual who is eligible for home and community-based services and meets both of the following requirements shall be given priority on a waiting list established under paragraph (D) of this rule:

(a) The individual is twenty-two years of age or older; and

(b) The individual receives supported living or family support services.

(2) Refinancing of adult services. An individual who is eligible for home and community-based services and meets both of the following requirements shall be given priority on a waiting list established under paragraph (D) of this rule:

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- (a) The individual resides in the individual's own home or the home of the individual's family and will continue to reside in that home after enrollment in home and community-based services; and
 - (b) The individual receives adult services from the county board.
- (3) Aging caregiver or intensive needs. An individual who is eligible for home and community-based services and meets either of the following requirements shall be given priority on a waiting list established under paragraph (D) of this rule:
- (a) The individual does not receive residential services or supported living, either needs services in the individual's current living arrangement or will need services in a new living arrangement, and has a primary caregiver who is sixty years of age or older; or
 - (b) The individual has at least one of the following service needs that are unusual in scope or intensity:
 - (i) Severe behavior problems for which a behavior support plan is needed;
 - (ii) A mental health diagnosis for which medication has been prescribed;
 - (iii) A medical condition that leaves the individual dependent on life-support medical technology;
 - (iv) A condition affecting multiple body systems for which a combination of specialized medical, psychological, educational, or habilitation services are needed;
 - (v) A condition the county board determines to be comparable in severity to any condition described in paragraphs (F)(3)(b)(i) to (F)(3)(b)(iv) of this rule and places the individual at significant risk of institutionalization.
- (G) Order for offering services to individuals within priority categories established in paragraph (F) of this rule
- (1) If two or more individuals on a waiting list for home and community-based services have priority for the services pursuant to paragraph (F) of this rule, a county board shall use the following criteria to determine the order in which the individuals with priority are offered the services.
- (a) The maximization of federal funding;
 - (b) A mix between the individuals in each of the priority categories in paragraph (F) of this rule;

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(c) In dealing with living arrangements, promoting of individuals' ability to choose other individuals with priority under paragraph (F) of this rule with whom to live if the individuals have an existing relationship.

(2) When individuals are offered home and community-based services in accordance with the criteria in paragraph (G)(1) of this rule and two or more individuals have equal rank, the county board shall offer the services to such individuals in the order they are placed on the waiting list based on their date of request.

(H) Transfer to self-empowered life funding waiver

If an individual who is enrolled in the individual options waiver or the level one waiver requests enrollment in the self-empowered life funding waiver, the department may transfer the individual to the self-empowered life funding waiver provided the individual's needs can be more appropriately met by the self-empowered life funding waiver, the individual meets all eligibility criteria for the self-empowered life funding waiver, and the county board requests to enroll the individual in the self-empowered life funding waiver. At any time within one hundred eighty days of enrollment in the self-empowered life funding waiver, at the individual's request, the county board shall request that the individual be re-enrolled in the waiver from which the transfer was made.

(I) Waiting lists for non-medicaid programs and services

If a county board determines that available resources are not sufficient to meet the needs of all individuals who request non-medicaid programs or services, the county board shall establish one or more waiting lists for such programs or services in accordance with the county board's plan developed under section 5126.04 of the Revised Code.

(J) Due process

(1) Due process shall be available to an individual aggrieved by an action of a county board related to any of the following:

(a) The approval, denial, withholding, reduction, suspension, or termination of a service funded by the state medicaid program.

(b) The establishment or maintenance of, placement on, the failure to offer services in accordance with, or removal from a waiting list.

(2) Due process shall be provided in accordance with Chapters 5101:6-1 to 5101:6-9 of the Administrative Code when the service involved is funded by the state medicaid program and in accordance with rule 5123:2-1-12 of the Administrative Code when the service involved is not medicaid-funded.

(3) If an individual is aggrieved in accordance with paragraph (J)(1) of this rule, a county board may, if it has adopted a grievance procedure under rule 5123:2-1-12 of the

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Administrative Code, attempt to informally resolve the matter through the grievance procedure. The filing of a grievance under the grievance procedure shall not affect the right of the individual to due process in accordance with paragraph (J)(1) of this rule.

- (4) A county board shall, in the manner specified in rule 5123:2-1-12 of the Administrative Code, give notice to each individual on the waiting list, the individual's guardian, and in accordance with section 5126.044 of the Revised Code, the individual's family, as applicable, of the individual's due process rights. The county board shall document that such notice was given and the content of the notice.
- (K) Upon the department's request, a county board shall submit in a format specified by the department documentation related to its waiting list for home and community-based services and any waiting list established pursuant to paragraph (I) of this rule including, but not limited to, information regarding individuals who requested services or were removed from the waiting list.
- (L) The department shall monitor compliance with this rule by county boards and their contract agencies. Technical support shall be provided by the department upon request and through regional and statewide trainings.
- (M) When this rule requires disclosure of the alternative services available to an individual, a county board shall ensure that providers are identified in accordance with sections 5126.046 and 5126.055 of the Revised Code and rules adopted by the department regarding free choice of provider.
- (N) A county board that operates an ICFMR and other operators of ICFMR shall not be subject to the requirements of this rule with respect to persons requesting admission to an ICFMR. Requests for admission to ICFMR shall be subject to the requirements of rule 5101:3-3-02 of the Administrative Code.
- (O) Nothing in this rule shall be interpreted to alter the obligation of a county board to provide a service, which it is required to provide under applicable law. Nothing in this rule shall be interpreted to create an obligation of a county board to provide a service, unless the obligation exists under applicable law.

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